

F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

110 **FILE**

SUBJECT Julius + Ethel Rosenberg

FILE NO. 65-58236

VOLUME NO. 38

SERIALS

2263 -

2315

NOTICE

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File No: 65-58236
Sub B8

Re: Rosenberg

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
NR	4/11/57	Ny let HQ	2	2	b7C b7D
2309	5/2/57	Brannigan memo to ^{and encl.} Belmont	1/1	1/1	
NR	5/10/57	Hoover memo to Tolson	1	1	
2310	5/13/57	HQ let DOJ and encl.	1/4	1/4	b1
2311	5/10/57	Belmont memo to Boardman	1	1	
NR	5/14/57	C. Nept HQ	12	12	b2, b7D b7C
2312	5/27/57	Ny A/T HQ and encl.	2/2	2/2	b2, b7C
2312	5/29/57	HQ AT NY	1	1	
2313	5/29/57	HQ let DOJ	1	1	
2314	5/29/57	Belmont memo to Boardman	2	2	
NR	6/10/57	SF Nept HQ	49	47	^{2 w/H} b2, b7D b7C
2315	6/14/57	Ny A/T HQ	1	1	

81 79
Rev. Rel. deny refer presume signature

Re:

Rosenberg

Date:

(month/year)

Rev. Kel deny refer presume pigor FBI/DOJ

File No: 65-55236
part 38

Re: Rosenberg

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
2263	6/15/56	HQ let DoJ and encl.	1	1	
2264	6/14/56	HQ A/T NY	1	1	
2265	6/15/56	NY let HQ	1	1	b2 b7D
2266	6/11/56	Belmont memo to Boardman	2	2	
2267	6/15/56	Belmont memo to Boardman and encl.	2/1	2/1	
2268	6/18/56	HQ let NY	1	1	b7D
2269	6/18/56	HQ let DoJ	1	1	
2270	6/19/56	CAS let HQ	1	1	
2271	6/14/56	HQ let DoJ	2	2	
2272	6/26/56	HQ let DoJ	2	2	
2273	6/25/56	Roach memo to Belmont	1	1	
2274	6/18/56	Nichols memo to Tolson and encl.	1/3	1/3	

21 21
Rev. Rel deny refer presumed papers

File No: 65-58236 Re: Rosenberg Date: _____
and 38 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
NR	6/20/56	PH let HQ	4	4	b7D, b2, b7C
2274	6/22/56	HQ let DoJ	1	1	
2275	6/28/56	DoJ let HQ	2	—	3 PP disposition of document handled by DOJ (3)
2276	6/29/56	London let HQ	1	1	
2277	6/27/56	DoJ memo	1	—	b1 1 PP disposition of document handled by DOJ (1)
NR	7/11/56	memo	1	1	
NR	8/1/56	Bulky Exhibit inventory	1	1	
2278	8/2/56	CA let HQ and EBF	1/125	1/125	
2279	8/2/56	London let HQ and encl.	1/7	1/7	b1
2280	8/6/56	NY let HQ and encl.	1/19	1/19	
NR	7/31/56	NY R/s	1	1	
2281	8/7/56	Brannigan memo to Belmont	2	2	b7D

165 165
Rev. Rel sent Ref presumed proper
4
FBI/DOJ

File No: 65-58236
sub 38

Re: Rosenberg

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
NR	8/28/56	news article	1	1	
2282	8/31/56	NY let HQ and encl.	2/1	2/1	
2283	8/31/56	enclosure & envelope	90	90	
2284	9/4/56	DOJ let HQ HQ let DOJ	1	1	IPP disposition handled by DOJ (1) b1
2285	9/6/56	HQ let DOJ	2	2	b7D, b2
2286	8/28/56	Havana let HQ	2	2	b2, b7D
2286	9/6/56	HQ let CIA	2	2	b2, b7D
2286X	9/4/56	Belmont memo to Boardman	1	1	b1
2287	9/4/56	Director R/S and encl.	1/1	1/1	
2288	9/6/56	DOJ let HQ	1	1	IPP disposition of documents handled by DOJ (1)
2288	9/12/56	HQ let DOJ	2	2	
NR	9/7/56	PH rept HQ	13	11	b2, b7C, b7D, b7E

119 Rev. 117 Rel deny refer presumed preper
FBI/DOJ

File No: 65-58236
Act 38

Re: Rosenberg

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
2289	9/11/56	Branigan memo to Belmont	2	2	b1
NR	9/11/56	news release	2	2	
NR	9/20/56	Lee memo to Branigan	1	1	
NR	3/31/56	Jones memo to Nichols	1	1	
2290	9/11/56	London let HQ and encl.	1/2	1/0	244H b1
NR	9/24/56	HQ let NY	1	1	b1
NR	9/29/56	AL rept HQ	12	12	b2, b7D b7C
2291	10/17/56	HQ let DOJ	2	2	
2292	10/15/56	Jones memo to Nichols and encl.	1/5	1/5	
2293	10/19/56	HQ let DOJ	2	2	b1
NR	10/23/56	CA rept HQ	19	19	b2, b7D, b7C
2294	10/24/56	Havana let HQ	1	1	b2, b7D

52 Rev. 50 Rel. deny refer presumed pre-proc. FBI/DOJ

File No: 65-58236
22238

Re: Parsons

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
NR	10/25/56	NY let HQ	3	3	
NR	11/6/56	HQ let DOJ	2	2	
2295	11/15/56	NY let HQ	2	2	b2, b7D
NR	11/30/56	SF let HQ	40	40	b2, b7C, b7D
2296	12/14/56	NY a/t HQ	1	1	
2297	12/17/56	Belmont memo to Boardman	1	1	
2298	12/3/56	DOJ let HQ	7	—	1 P.P. disposition of document handled by DOJ (1)
2299	12/12/56	Branigan memo to Belmont	2	2	
2300	12/18/56	Branigan memo to Belmont	2	2	
2301	12/27/56	NY let HQ	1	1	b2, b7D
NR	12/31/56	PH let HQ	3	3	b7D
2302	1/15/57	Branigan memo to Belmont	2	2	

59

59

Rev Rel deny refer presume paper

File No: 65-58236
sect 38

Re: Rosenbergs

Date: _____
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released	
2303	1/14/57	DOJ let HQ	-	-	² PP disposition of document handled by DOJ (2)
2303	4/16/57	HQ let DOJ	1	1	
2304	2/8/57	Lee memo to Branigan	1	1	
NR	1/18/57	AL rept HQ	20	20	b2, b7D, b7E b7C
NR	2/1/57	Bulky exhibit inventory	1	1	
2305	2/20/57	DOJ let HQ	1	-	^{PP} disposition of document handled by DOJ (1)
2306	2/26/57	Lee memo to Branigan	1	1	
2307	3/12/57	NY let HQ	1	1	
NR	3/20/57	NY rept HQ	4	4	
NR	11/28/56	Jones memo to Nichols and encl	1/10	1/10	
2308	4/16/57	3rd party let HQ and encl.	1/16	1/16	
2308	4/18/57	HQ let 3rd party	1	1	

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Rev Rel deny refer preserve preserve

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JUNE 15, 1956

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ENCLOSURE

65-58236-2013

DATE 7-2-80 EX-106

SECRET (EAC/100)

Armen General

1944

Attorney General 10/1/1941

330-44114

5 (National Committee

(Morton Sobell)

1000

1 - Mr. William P. Rogers
Deputy Attorney General

1-2 Assistant Attorney General
William F. Tompkins

JPL:ba1 (10) da

cc: 100-387835 (National Comm)
101-2482 (Morton Sobell)

EC: 101-2403 (1001301)

23 JUN 13 1953

SECRET

WAP

A MOTHER PLEADS FOR HER SON

Britain hears about Sobell

By Cedric Belfrage

LONDON

THE FUROR over the plight of "200 Social Democrats imprisoned for their beliefs behind the Iron Curtain" brought up by Labour Party leaders at the famous dinner for Bulganin and Khrushchev has caused many in Britain to wonder when political leaders will protest against Washington's imprisonment of Americans for their beliefs. In the British press the blackout on this American persecution continues: a week after the opening of the latest Smith Act trial in New York, not a line about it had appeared here.

On one sector there has been a breakthrough: the case of Morton Sobell, serving a 30-year term in Alcatraz as a "spy." A lively correspondence in the Manchester Guardian about the case and its implications, following a letter from philosopher Bertrand Russell (GUARDIAN, 4/9), has drawn attention sharply to "free world" hypocrisy about freedom and justice in socialist countries. The break-through is the result of a gallant, 8,000-mile pilgrimage by a 61-year-old woman from the Bronx, Mrs. Rose Sobell, who has just returned to the U. S.

SHE TOLD HER STORY: Reaching Britain in February, Morton Sobell's mother—then a complete stranger to the outside world—had formidable obstacles to surmount from the outset. On the ship the British immigration officer told her she could not land but, after action by Londoners to whom she radioed for help, she received a three-week permit. In that short time Mrs. Sobell met and told her son's story to:

- Six Labour MP's headed by Sydney Silverman, defender of the Rosenbergs and sponsor of the anti-capital punish-



MORTON SOBELL
They listened to the story

ment bill, who received her in the House of Commons.

- The Executive of the Fire Brigades Union and an important group of trade unionists and Labour Councillors, who passed the information along to their organizations for action.

- Prominent churchmen including Canon Collins of St. Paul's, the Bishop of Chichester and a group of Jesuits at Oxford. (The chief Rabbi, whom she tried to reach to arouse the concern of Jewish groups, would not speak to her.)

- Women's Assembly groups, and a group convened in Holy Trinity rectory, Dalston (east London), who promptly formed a local Sobell committee.

- A businesswoman, who sub-

scribed funds from which a national Sobell committee office has been set up in London.

- A Manchester group of former campaigners for the Rosenbergs, whose old committee was immediately revived to take up Sobell's cause.

THE RUSSELL RUCKUS: The effect of Mrs. Sobell's honest and courageous personality on Britons concerned about "free world" justice was indicated by Bertrand Russell's action following her visit to him. He told her he was not prepared to do anything until he read all the material she brought. The John Wexley book (published here this month but so far unreviewed) and Prof. Harold Urey's statement convinced him.

His Guardian letter elicited some indignant counter-blasts from pro-Washingtonians, including outright lies such as "the FBI has no power to arrest." Russell blasted back, suggesting that defenders of Washington justice should first discover the facts before sounding off. He received many letters asking further information which he has forwarded—with a donation for further spreading of the facts—to the new committee.

In Paris, where Mrs. Sobell spent two weeks after a visit to Rome, a public meeting in defense of Sobell was held April 23; in London a meeting is set for June 19, Rosenberg commemoration day. Mrs. Sobell, who did not know anyone in the three European capitals when she arrived, left with many warm friends of her son's cause to which she devoted every moment of her pilgrimage. As the first American directly connected with a cold-war persecution case to slip through the Cadillac Curtain on such a mission in several years, she has done an outstanding job.

65-58236-2263

FBI

Date: 6/14/56

Transmit the following message via Air-Tel

RM

(Priority or Method of Mailing)

FROM SAC, NEW YORK (65-15348)

TO DIRECTOR, FBI (65-58236)

JULIUS ROSENBERG, was, ET AL: ESPIONAGE-R

Rebulet to Chicago, 4/10/56 and Chicago letter 5/15/56.

"National Guardian" newspaper, issue of 6/4/56 reflects announcement that the book "Was Justice Done?", The Rosenberg-Sobell Case, by MALCOLM P. SHARP, Professor of Law, University of Chicago, would be published in book form on 6/19/56, the third anniversary of the execution of the ROSENBERGS. For information.

KELLY

- ① - Bureau (65-58236) (RM)
 1 - Chicago (65-3437) (RM)
 1 - New York (65-15348)

Mr. Belmont

RECORDED-46

18 JUN 15 1956

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 7-29-86 BY 3042 PWT-JAR

RJH:opr

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7/12

3 53 PM '56

Approved: *[Signature]*

Special Agent in Charge

Sent

M

Mr. Tolson	
Mr. Nichols	
Mr. Boardman	
Mr. Belmont	
Mr. Mason	
Mr. Mohr	
Mr. Parsons	
Mr. Rosen	
Mr. Tamm	
Mr. Nease	
Mr. Winterrowd	
Tele. Room	
Mr. Holloman	
Miss Gandy	

to NY
Bulet 6/18/56
reinstated NYC to
obtain book +
forward it to
15 JUL JAH

65-58236-2264

444 • UNITED STATES GOVERNMENT

5-58236)

DATE: 6/15/56

5-15348)

DIRECTOR, FBI

SUBJECT: J. Edgar Hoover

Re: was, et al

Re NY airtel 2/19/56, and Bulet 3/9/56.

On 6/1/56, A Richard H. Blasser advised that [redacted] orally informed that Evelyn Cooper, Maspeth Section membership director of CP, had decided not to move from Maspeth to the Canarsie section of Brooklyn to live with her husband's family, but would remain in Maspeth; the [redacted] however has been unable to ascertain names of the two individuals referred to by Cooper as having been involved in the ROSENBERG case and who are now underground. b2

Pursuant to Bureau instructions, [redacted] was advised to b2
no action which would jeopardize his status in CP activities.
[redacted] stated he would remain alert to obtaining the names of the
individuals in question but would take no action which would jeopardize
status.

Pending receipt of this information from [redacted] this case
be placed in a pending inactive status. b2 b7D

DECLASSIFIED BY 3042 PWT/lmw
ON 10/24/86

Classified by 2355
Exempt from GDS, Category 4
Date of Declassification Indefinite

(65-58236)(RM)
(2 (#7-4))

E O I
C.D. - E2610WACE

65-58236-224

29 JUN 19 1956

RECORDED - 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : L. V. Boardman

DATE: June 11, 1956

FROM : A. H. Belmont

 Ticklers: Mr. Lee
 Mr. Belmont
 Mr. Boardman
 Mr. Nichols

 SUBJECT: JULIUS ROSENBERG, wa., et al.
 ESPIONAGE - R

 Tolson _____
 Winterrowd _____
 Boardman _____
 Belmont _____
 Mason _____
 Mohr _____
 Parsons _____
 Rosen _____
 Tamm _____
 Nease _____
 Winterrowd _____
 Tele. Room _____
 Holloman _____
 Gandy _____

On 6/11/56 at 12:35 p.m., E. Robert Seaver, of the Department, telephonically contacted Supervisor J. P. Lee concerning action now being taken by U.S. Information Agency (USIA) to counteract effect of the Bertrand Russell letter printed in "Manchester Guardian" on March 26, 1956, which letter attacked the US judicial system. USIA representative told Mr. Seaver on 5/28/56, its representative in London said a letter from a high-ranking US jurist would help in counteracting the Russell letter and asked the Department to obtain same. Mr. Seaver stated he received a call from J. M. Gerrity of USIA on this date who told him the National Committee to Secure Justice in the Rosenberg Case is to have a meeting in London on Friday, June 15, 1956, and one Sydney Silverman, member of Parliament is to attend. Gerrity indicated he was thinking of a letter from Judge Learned Hand, Second Circuit, Circuit Court of Appeals, but Seaver felt this unwise since Morton Sobell, convicted espionage agent, has a motion for a new trial pending which might come before the Circuit Court of Appeals of which Hand is a retired member.

Seaver stated Gerrity then asked about a letter which Irving Ferman, Washington representative, American Civil Liberties Union, (ACLU) had written to "Manchester Guardian" and a copy of which had been furnished to "Voice of America." Seaver asked to be advised if Ferman and the ACLU could be safely used by USIA. A copy of the Ferman letter has been furnished to the Attorney General.

SAC LETTER 56-2 dated 1/10/56, told the field that ACLU has never been investigated by the Bureau and that the California Committee on Un-American Activities, in 1949 stated ACLU was heavily infiltrated with communists and fellow travelers, frequently followed the Communist Party line and defends Communist Party in its Los Angeles unit. The field was instructed not to document the ACLU in reports except where the information pertained to the Los Angeles chapter. ACLU, in its 1954 report restated its anticommunist and antifascist policy and stated it will defend civil liberties of all persons

65-58236

JPL:pb
(5)

RECORDED - 93

INDEXED - 93

65-58236-2266

Classified

Exempt

Date of Declassification

51 JUN 21 1956

 ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 7-28-86 BY 3042 PWR/NA

UNRECORDED COPY FILED IN

Memo for Mr. Boardman

regardless of political party, organization, denomination, race or nationality.

Irving Ferman, ^{was} the subject of case filed "Irving Ferman - International Development Program" and copies of report were furnished to the Attorney General. Numerous persons interviewed indicated Ferman was loyal to the US and had an excellent character. Several other individuals indicated they did not think Ferman should hold a position with access to classified documents because of his liberal views.

ACTION:

If you approve, Supervisor Lee will telephonically advise Mr. Seaver the ACLU has never been investigated by the FBI and advise him of the statement in the 1954 report of ACLU. Further, that Ferman is the Washington representative of the ACLU and information concerning him has been furnished to the Department under the caption "Irving Ferman - International Development Program." This conversation will be confirmed by letter.

I think OK except we should not mention 1954 report of ACLU.
fba

Secured telephonically
6/12/56 - 3:45 PM. JPK
letter 6/14/56
JPK

str

✓
OK. I remember I am disgusted at the dilly-dallying tactics of the LA if this matter. I have no interest in what they do now - it is anti-climatic.
f.

Office Memorandum

UNITED STATES GOVERNMENT

TO : L. V. Boardman

CONFIDENTIAL

DATE: June 15, 1956

FROM : A. H. Belmont

SUBJECT: JULIUS ROSENBERG, was., et al
ESPIONAGE - R

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE.

On 6-14-56 at 11:50 a.m. Clive Palmer of the Department telephonically contacted Supervisor J. P. Lee with reference to action being taken by U.S. Information Agency (USIA) to counteract the effect of the Bertrand Russell letter to "Manchester Guardian" of 3-26-56, which letter attacked the U.S. judicial system. USIA representative in London has requested a letter from a high-ranking U.S. jurist to counteract the Russell letter. Palmer advised that consideration is being given by Thomas Roderick of USIA to having Edward De Grazia write such a letter and wanted to know what information Bufiles contained regarding De Grazia. He added it was his understanding it had been decided not to use Irving Ferman, Washington representative of American Civil Liberties Union, to write the letter.

Bufiles reflect De Grazia is an attorney connected with the law firm of Kirkland, Fleming, Green, Martin and Ellis, Washington, D.C. On 3-5-56 Civil Service Commission requested full-field investigation of De Grazia based upon derogatory information concerning his two brothers, Alfred and Sebastian. On 3-21-56 investigation discontinued when Civil Service Commission advised form sent in error. On his Personal and Identification Data Form filed with Civil Service Commission De Grazia listed membership in Book Find Club from 1950 to 1952, which organization has been cited by California Committee on Un-American Activities as a communist-front organization. On 6-12-56 a request for a full-field loyalty investigation of De Grazia was received in connection with a position with the United Nations Economic, Scientific and Cultural Organization.

In March, 1955, Irving Ferman advised Mr. Nichols that Edward De Grazia sought to dissuade Ferman from testifying before the Senate Internal Security Subcommittee where Ferman denounced making transcriptions of jury proceedings. By letter of 4-12-56 De Grazia forwarded to the Director a copy of a letter he wrote "Manchester Guardian" attacking the Russell letter. "Washington Post and Times Herald" for 6-14-56 contained the attached letter to the editor written by De Grazia which attacked the Russell letter and pointed out various items in evidence which convinced the jury of the guilt of Morton Sobell.

Enclosure
JPL:jdb
(6)

cc - Boardman
Belmont
Nichols

ENCLOSURE

SECRET

RECORDED - 93

INDEXED - 93

Classified by 3042PWT/1mw

Declassify on: OADR 10/29/80

65-58236-2267

JUN 19 1956

CONFIDENTIAL

5 JUN 21 1956

Classified by 3042PWT/1mw
Exempt from automatic
Date of declassification Indefinite

~~CONFIDENTIAL~~

Memorandum for Mr. Boardman

76 Bufiles reflect De Grazia's brother, Alfred, was investigated in 1952 under case captioned "Alfred Joseph De Grazia - International Development Program." G-2 informants, of unknown reliability, described Alfred De Grazia as "fanatically pro-Russian," "slightly to left" and "soft on Russian policy." Twenty-one other persons described him as loyal. Bufiles reflect Sebastian De Grazia, another brother, had his clearance revoked in 1954 when employed by Human Researchers Research Office.

ACTION:

6-14-56 JPH
22-1-56
P212-2
If you agree, Supervisor Lee will telephonically advise Mr. Palmer that this Bureau has received a request for a full-field loyalty investigation of Edward De Grazia on 6-12-56 and copies of reports will be furnished to the Department. Further, reports concerning Alfred De Grazia, brother of Edward, have been furnished to the Department in the past. This conversation will be confirmed by letter.

Summary memo on De Grazia being typed now
HBR

Referred to DDC
Rogers 6/14/56
JPH

OK
H.

W

RE. OAK
MOR
WATKINS

~~CONFIDENTIAL~~

Bertrand Russell and the Sobell Case

Earl Russell claims to believe and asks us also to believe that Morton Sobell is innocent of espionage, whereas the FBI is guilty of atrocities measurable in our time only by those reported of the Nazis and the Communists. In joining Americans with Nazis and Communists, Earl Russell may think his anti-Americanism is hidden beneath the folds of "neutrality." I think he wears that cloak as poorly as does his compatriot, Graham Greene.

One of the reasons why we should believe Morton Sobell innocent of espionage is because his chief accuser, Elitcher, was "an acknowledged perjurer." Yet Russell does not say that Elitcher committed perjury during Sobell's trial, but only that he previously perjured himself in denying Communist membership. Earl Russell's point, then, is: "Once a crook, always a crook"; once a perjurer, always a perjurer. Americans may take pride that the jury of 12 common men who tried Morton Sobell were able to rise above this popular prejudice.

Another reason why we should believe Morton Sobell innocent is because Earl Russell says he thinks so, and he recently "looked into the evidence." But the 12 men who comprised Sobell's jury did more than look into the evidence. They sat and listened and watched all of it. And it is no popular prejudice, but a profound bit of common sense solidly embedded in Anglo-American law, that it is easier to tell a liar when you can see and hear him face to face than when you can only read his language upon a printed page. Elitcher faced Sobell's jury when he

tried to lie or to tell the truth. He did not face Earl Russell.

One of the ablest of American appellate judicial benches also "looked into the evidence." Indeed it "scrutinized the record with extraordinary care" to see if there were any errors committed in the trial below. It found none. Nor did the Supreme Court of the United States disturb Sobell's conviction although it was asked to do so three times. Yet Earl Russell thinks Morton Sobell innocent.

Perhaps the biggest reason why we, like Earl Russell, should think Morton Sobell innocent is the charge that the FBI inspired a brutal kidnapping of Sobell from Mexico to the United States and Sobell's lawyer was afraid to tell the trial court because such criticism of the sacrosanct could lead only to an aggravated penal sentence. But Sobell did tell the trial court—between the time he was convicted and the time he was sentenced. As reported by the Court of Appeals:

"At the end of the trial, after Sobell had been found guilty, his counsel made a motion in arrest of judgment based upon an affidavit by Sobell that he had been illegally abducted by Mexican police from his residence in Mexico City and taken across the border into the United States where he was delivered into the immediate custody of waiting United States agents. Sobell asked the trial judge to conduct a hearing on the question of whether United States officials had participated in, or instigated, his illegal kidnapping."

The learned appellate court had its own explanation of why Sobell delayed the telling of

this tale. "He preferred to take his chances on the verdict, withholding his trump card until the trial was over." The trial judge's denial of Sobell's motion was upheld for the reason that "the Federal Rules of Criminal Procedure allow no such tactic."

Still another reason for Sobell's silence at the trial suggests itself. Sobell did not take the witness stand in his own defense. He could not tell his story about the FBI and enjoy this constitutional right, too. He made his bed and slept in it—while the Government introduced uncontroverted evidence, including testimony by an immigration official and Sobell's deportation card, to show that Sobell was legally deported. Thus did Sobell forfeit his right to give hell to the atrocious FBI and the lie to the treacherous Elitcher.

I fear that the trouble with these explanations of why Sobell held back on his tale of the FBI is that they really are not very likely to generate pity for Sobell and hatred for the FBI.

Earl Russell suggests that when such "facts" as he alleges become known outside the United States, they turn hundreds of thousands of people, if not into Communists, at least toward "neutrality" and away from NATO. If people are ready to be as thoughtless as they must to embrace aspersions upon America such as these of Earl Russell's—there must be a deadly prejudice underfoot and at fault. It is a prejudice in Earl Russell's own sense of the word—irrational, unreasoned, unjust.

EDWARD DE GRAZIA
Washington

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DPK

Wash. Post and Times Herald *P. 14*
Wash. News _____
Wash. Star _____
N. Y. Herald Tribune _____
N. Y. Mirror _____
N. Y. Daily News _____
Daily Worker _____
The Worker _____
New Leader _____

Date *6/14/66*

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 7-28-86 BY 3042 PAF/AR

ENCLOSURE

65-58236-2267

T. J. Lee - Mr. Lee
Mr. Nichols

SAC, New York (65-15348)

(orig & 1)

June 18, 1956

Director, FBI (65-58236)

137873

JULIUS ROSENBERG, was., et al
ESPIONAGE - R

ReBulet to Chicago April 10, 1956,
advising that Professor Malcolm Sharp of the
University of Chicago Law School planned to
publish a book on the Rosenberg case and that
Dr. Harold Urey had written a preface for this
book.

The "National Guardian" for June 4,
1956, contains an advertisement on page 10 for
a book entitled "Was Justice Done?" by Malcolm P.
Sharp with an introduction by Dr. Urey. The
advertisement indicates the book will be published
June 19, 1956, the third anniversary of the Rosenbergs'
execution, although it can be published prior to
publication date. The book is being distributed
by "Monthly Review Press," 66 Barrow St., New York
City. You should obtain a copy of this book
immediately, review it and forward the book
and your review to the Bureau.

cc - 1 - Chicago (for info)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10/24/83 BY 3042 PWT/lmw

NOTE: Malcolm P. Sharp acted as cocounsel with
Emanuel H. Block in latter stages of Rosenberg case.
He has been a Professor of Law at the University of
Chicago since 1933 and according to an informant, who
has furnished reliable information, [redacted]

[redacted] he is active member and past president
of the Chicago Chapter of the National Lawyers' Guild.

RECORDED - 73

65-58236-2268

COMM - FBI
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53 JUN 22 1956

EX-127

my fee 7-27-56 subbook imm
Book submitted 8-1-56 & book
review will be submitted 8-3-56 &c

JUN 19 1956

WAR
92

CONFIDENTIAL

tickler Nichols
Almont

98971

(original and one)
Mr. William P. Rogers
Deputy Attorney General

June 18, 1956

Director, FBI

**JULIUS ROSENBERG, with aliases, et al
ESPIONAGE - R**

Reference is made to our letter of June 14, 1956, relative to the action planned by United States Information Agency (USIA) to combat the effect of the letter of Bertrand Russell, British philosopher, printed in the "Manchester Guardian" of March 26, 1956. This letter attacked the United States judicial system and expressed doubt concerning the guilt of the Rosenbergs and Morton Sobell.

On June 14, 1956, at 11:50 A.M. Mr. Clive Palmer of the Department telephonically advised Mr. J. P. Lee of this Bureau that Thomas Roderick of USIA advised him that Agency is giving consideration to having Edward De Grazia write a letter for the use of USIA in England to counteract the Russell letter. Mr. Palmer inquired concerning information contained in Bureau files relating to De Grazia.

On June 18, 1956, at 3:35 P.M. Mr. Palmer was advised by Mr. Lee that Bureau files reflected that a request had been received on June 12, 1956, for a loyalty investigation of Edward De Grazia and copies of reports would be furnished to the Department. Further, reports concerning a brother of De Grazia had been furnished to the Department in the past under the caption of "Alfred Joseph De Grazia - International Development Program."

~~SECRET~~
This is to confirm the information furnished telephonically to Mr. Palmer by Mr. Lee on June 18, 1956.

65-58236

Classified by 2 P. 55
Exempt from GDS, Category 2
Date of Declassification Indefinite

Tolson
Nichols

ET. DE INE
FBI

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7-27-86 BY 2042 PWT/JAR

RECORDED - 83

CONFIDENTIAL

MAILED 5
JUN 19 1956
COMM-FBI

23 JUN 20 1956

100-148352-
138-3445

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WAB
JR

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (65-58236)

DATE: June 19, 1956

FROM : SAC, CHICAGO (65-3437)

SUBJECT: JULIUS ROSENBERG, was.
ESPIONAGE - R

Re Chicago letter to Bureau dated 5/15/56.

An advertisement on the back cover of the June, 1956 issue of the "Monthly Review" reflects that the book "Was Justice Done" by Professor MALCOLM SHARP, with an introduction by Dr. HAROLD C. UREY, would go to press on June 19, 1956. The book is being published by the "Monthly Review", it will sell for \$3.50 a copy, and it is described as a review of the SOBELL and ROSENBERG trials.

A copy of the above book was ordered by SA ROBERT V. WALKER through the Post Office News Co., 37 W. Monroe Street, Chicago, Illinois, and it will be forwarded to the Bureau when it is received.

- P -

② - Bureau (R.M.)
1 - Chicago
RVW:mms
(3)

RECORDED - 65-58236-2270

7 JUN 22 1956

See Bulet to
NY cc Chicago.
6/18/56 - instructing
NY to get book.
Jpy

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7-28-86 BY 3042 PWT-JAR

JUN 27 1956

CONFIDENTIAL

ticklers

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Nichols
Lee

(original and one)

Mr. William P. Rogers
Deputy Attorney General

June 14, 1956

Director, FBI

JULIUS ROSENBERG, with aliases
ET AL
ESPIONAGE - R

SECRET

Reference is made to our letter of May 31, 1956, relative to the action planned by U. S. Information Agency to combat the effects of the letter of Bertrand Russell, British philosopher, printed in the "Manchester Guardian" for March 26, 1956, which letter attacked the United States judicial system and indicated Russell felt the Rosenbergs and Morton Sobell were innocent.

On June 11, 1956, at 12:35 P.M. Mr. E. Robert Seaver of the Department telephonically advised Mr. J.P. Lee of this Bureau that Mr. J. M. Gerrity of U. S. Information Agency told him the National Committee to Secure Justice in the Rosenberg Case is planning to hold a meeting in London, England, on June 15, 1956, and that Sydney Silverman, Labour Party Member of Parliament, will attend. Mr. Seaver stated that Mr. Gerrity spoke of a letter from a high-ranking United States jurist, which the U. S. Information Agency representative in London had requested, and Mr. Gerrity stated he thought that Judge Learned Hand, Second Circuit Court of Appeals, would possibly write such a letter. Mr. Seaver stated that he felt this would be inadvisable since Morton Sobell, convicted espionage agent, has a motion for a new trial pending in the District Court, Southern District of New York, and this motion could possibly come before the Second Circuit Court of Appeals on appeal.

Mr. Seaver stated that Mr. Gerrity mentioned a letter to the "Manchester Guardian" which had been written by Irving Ferman of the American Civil Liberties Union in answer to Russell's letter of March 26, 1956. Mr. Seaver inquired concerning information in Bureau files relating to the American Civil Liberties Union and Ferman in order that he could advise Mr. Gerrity concerning a contact with Ferman.

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JUN 14 1956
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INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7-28-86 BY 3042 PWR/AR
EX-109
59 JUN 19 1956

CONFIDENTIAL

RECD BELMONT

JUN 18 1956

WAB
Bm
JPL

CONFIDENTIAL

**Memorandum for Mr. William P. Rogers
Deputy Attorney General**

On June 12, 1956, at 1:40 P.M. Mr. Seaver was advised by Mr. J. P. Lee of this Bureau that our files showed that the American Civil Liberties Union had never been investigated by this Bureau. Concerning Irving Ferman, Mr. Seaver was advised that Ferman is the Washington representative of the American Civil Liberties Union, and information concerning him had been furnished to the Department under the caption of "Irving Ferman - National Development Program."

This is to confirm the above telephone call.

SECRET

- 2 -

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The Attorney General

Director, FBI

SECRET

RECORDED

64-58236-2272
In your memorandum of April 15, 1950, the title of recent propaganda attack by the National Committee to Secure Justice in the Rosenberg Case and the attack by Herbert Gold appear to be part of a sustained communist attempt to destroy public confidence in our judicial system. The attack pointed out this propaganda is presumably used abroad to discredit the United States.

There is enclosed a photocopy of a letter to "The Times," written by Jean-Paul Sartre, French philosopher and writer, on June 10, 1950. This letter appeared in "The New York Times" for June 12, 1950. The statements made by Sartre appeared to have been obtained from the affidavits filed by Morton Sobell, convicted espionage agent, in support of his motions for a new trial. His motions were denied on June 20, 1950.

This Bureau has conducted no investigation concerning Sartre; however, references to him reflect that he has long been associated with several European peace organizations, some pro and others anticommunist sponsored. Sartre has been described as a progressive intellectual and has identified communism as "the friend of the people." U. S. intelligence agencies abroad have reported that Sartre is procommunist in his thinking. In 1942 he participated in the non-aligned peace Conference held in Zagreb, Yugoslavia. In 1948 he participated in a number of communist front meetings, which were protesting the execution in Greece of a number of communist participants.

Classified
Exempt from GDS, Category
Date of Declassification Indefinite

101-2493 (Morton Sobell)

100-387835 (National Committee to Secure Justice in the Rosenberg Case)

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SECRET

See memo Belmont to Boardman 6/16/50 Same Caption



Memorandum to the Attorney General

He was active in organizing groups in France for the defense of Ethel and Julius Rosenberg. In 1963 he became a member of the Communist World Peace Council and has remained active in that group since that time.

The above is furnished to you for your information.

62-10236

Enclosure

1 - Mr. William P. Rogers Enclosure
Deputy Attorney General

1 - Assistant Attorney General Enclosure
William F. Tompkins

~~SECRET~~

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. A. H. BELMONT

DATE: June 25, 1956

FROM : R. R. ROACH

SUBJECT: JEAN-PAUL SARTRE
INFORMATION CONCERNING

JULIUS ROSENBERG

The Director has inquired if Bufiles contain anything on Jean-Paul Sartre, who in a letter to "The New York Times" (June 15, 1956) urged a review of the Morton Sobell case. Sartre a Frenchman by birth (Paris 6/21/05) is a former teacher of philosophy and leading French exponent of existentialism. He is editor of "Les Temps Modernes." His article states his opinion of Sobell's innocence shared by Europeans and Americans and he comments that proof has never been submitted indicating Sobell committed a crime.

64-5693-231-

Bufiles reveal no investigation of Sartre although numerous references reflect his association with many European peace organization some pro and others anticommunist sponsored. U.S. intelligence sources abroad have reported that Sartre will join any organization advocating peace regardless of the composition. He has been described as procommunist in his thinking and has identified communism as "the friend of the people." He has encouraged youth to believe in nothing spiritual. Sartre has also been described by some sources as being anticommunist. In 1945 Sartre toured the United States under the sponsorship of the Office of War Information. In 1951 he participated in the non-Communist Peace Conference held in Zagreb, Yugoslavia. In 1952 he participated in a number of communist front meetings, notably those protesting the execution in Greece of a number of communist partisans. Also during 1952 he was extremely active in organizing groups for the defense of Ethel and Julius Rosenberg. In 1953 he became a member of the Communist World Peace Council and as late as early 1956 was still active in this group.

ACTION:

Classified by 2358 WRR/DAH
Exempt from GDS, Category 2
Date of Declassification Indefinite

Memorandum to the Attorney General advising of information Bureau files contain on Sartre attached for approval.

WFW:uec

(5)

- 1 - Mr. Nichols
- 1 - Mr. Belmont
- 1 - Section 401
- 1 - Mr. Woods
- 64-55038-201

Enclosure sent 6-26-56

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7-28-86 BY 3042 PWT-JAR

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Gandy _____

UNRECORDED COPY FILED IN 101-2100

AUG 27 1956

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE 6/18/56

FROM : L. B. Nichols

SUBJECT:

Tolson _____
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I am attaching hereto a letter which Theodore Jacobs, who is in charge of public relations for the Committee to Secure Justice for Morton Sobell, forwarded to Irving Ferman and Harold Greene. The fourth paragraph on the first page is most unique and as Ferman points out sounds like a new approach.

In connection with the over-all matter of the world-wide propaganda in the Sobell case and the conversations which the Domestic Intelligence Division has had with Olive Palmer, it seems to me that the suggestion should be made that copies of the Government's answer to the Sobell Petition were never mimeographed and disseminated, yet the Sobell Petition was given widespread dissemination. A further suggestion might be made that there be an alert kept on a decision to be handed down by Judge Irving Kaufman with reference to the motion filed in the Sobell case. Should Kaufman deny the motion, I suspect that wild accusations which have been made and certainly there should be an alert in the Department to give this decision widespread publicity.

Enclosure

cc - Mr. Boardman
Mr. Belmont

LBN:fc

Letter to D. A. B. Rogers
 Att - E. Robert Brown
 6/17/56 - JH

ENCLOSURE

RECORDED - 86

65-58236-2274

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 7-28-86 BY 3042 PWT-JAC

U 2 DEB: DE 102106
 L B T

UNRECORDED COPY FILED IN 100-2483-1306
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A memo
from

IRVING FERMAN

Mr Louis -

I am attaching a
copy of letter sent to
Harold and myself from
the Soloff people. The "Secretariat"
must manifest the
new line. The fourth paragraph
sounds like a new approach.

ENCLOSURE

RECORDED - 86

65-58236-2274

ENCLOSURE

EX. 120

JUL 5 1956

Compliments of LAW REPORTER PRINTING CO.

C
O
P
Y

COMMITTEE TO SECURE JUSTICE FOR MORTON SOBELL

940 Broadway, New York 10, N.Y.
ALgonquin 4-9988

June 12, 1955

Irving Ferman and
Harold P. Green
American Civil Liberties Union
412 Fifth St., N.W.
Washington, D. C.

Dear Mr. Ferman and Mr. Green:

I have been meaning to write you ever since I read your letter in the Manchester Guardian. However, I wanted to wait until I could enclose documentary material.

It is not my purpose to argue the many statements that Lord Russell made concerning matters that go beyond the case of Morton Sobell. However, I believe that the facts and documentation presented in the enclosed copies of the legal motions now before the courts show conclusively the illegalities involved in this case, some of which Lord Russell referred to. An investigation is also under way in an area of the case not covered in these present motions.

These motions were argued before Judge Irving Kaufman on Monday, June 4th, and he has the matter under consideration. I wish you could have been present in court to hear the argument. The prosecution does not deny that Morton Sobell was taken from Mexico illegally. It argues on technicalities, such as saying that the prosecution did not use perjured testimony, because the testimony was never meant to show in the first place that he had been legally deported. We hope that if the transcript of the hearing is not too long, to be able to reproduce copies and if this is done, we would be most happy to send you a copy.

Finally, let me say that if I had not made a careful study of this case, I would find it difficult to believe that some of the events actually transpired. One's first impulse is to deny that anything like this could occur, because we believe that our cherished traditions of justice in the United States are the best in the world. It is not that the U.S. government is malicious, or that the judicial system is corrupt, or that the F.B.I. is corrupt. It is that during a time of hysteria, various persons charged with grave responsibilities performed dishonest acts in order to further their own careers. This has happened in the past, and I'm afraid will happen in the future. The difficulty is that once the deed is done, it becomes extremely difficult to undo, precisely because people tend to fear that if these acts are proven true, the nation will lose prestige. However, I believe, to the contrary, that the establishing of the truth, no matter how painful for the moment, will actually enhance our country's prestige because it will reaffirm our devotion to justice for every citizen.

ENCLOSED

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-22-84 BY 3046 PWS-J

Thank you for your interest in this matter, and I hope that on reading the enclosed briefs, you will agree that it would be in the public interest that a hearing be held on these motions so these charges can either be proved or disproved in open court. In the event Judge Kaufman denies a hearing, the matter will, of course, be appealed.

Should you wish further clarification or information, I would be happy to try to answer your questions.

Very sincerely yours,

Theodore Jacobs
PUBLIC RELATIONS

4444

FORM 100-10 (Rev. 1-25-60)
 (U.S. GOVERNMENT PRINTING OFFICE)

DR. LOUIS BERNARD, M.D.
10 - 10
(100) (100)

On 1/15/64, [REDACTED] was, FBI [REDACTED] furnished SA JOSEPH [REDACTED] the following information and requested his identity be protected. [REDACTED] was described as a [REDACTED]

██████████ stated he would be glad at any time to furnish the FBI with information regarding any subversive activity he might learn of but did not desire to furnish information regarding criminal matters. He said he thoroughly disliked the Russian system of government and had no sympathy for Communism whatsoever. b6 b7C

1 - Bureau (100-367747) (REG. MAIL)
 (65-4390) (JULIUS ROSENBERG) (Info) (RM)
 2 - New York (100-89548) (JULIUS ROSENBERG) (Info) (RM)
 (100-113764) (RUSCH ROSENBERG) (Info) (RM)
 2 - St. Louis (100-12643) (REG. MAIL)
 3 - Philadelphia (100-90346) (RUSCH ROSENBERG)
 (100-37362) (DR. LOUIS H. TAYNE)
 (65-4390) (JULIUS ROSENBERG) (Info)

NOT RECORDED
195 JUN 21 1956

SECRET (2)

389
JUN 20 1954

original filed in 100-358712-16

MEMPHIS, TEN 4/29/56

Re: JAMES EDWARD ROSENBERG
ESPIONAGE - R

Re: LOUIS BACHMANN, THINE
IS - R

[REDACTED] was asked if THINE had ever indicated sympathy for the Communist Party in the United States. [REDACTED] answer was negative, and added that THINE had never mentioned the Communist Party of any country but confined his praise to the Russian system which he also termed the "progressive system."

b7D
b7C

[REDACTED]

b7D
b7C

[REDACTED]

b7D
b7C

[REDACTED]

b7D
b7C

However, in an effort to determine whether [REDACTED] allegations had any merit, the files of Dr. THINE and others in the Philadelphia Office have been reviewed. THINE was the subject of an IS-C case in which a closing report was written by SA [REDACTED] dated 1/27/52, at Philadelphia. It was determined that one [REDACTED] is the son-in-law of THINE and is married to THINE's daughter [REDACTED]. It was also determined that in the report of SA JAMES P. [REDACTED] dated 1/14/51, in the case of JULIUS ROSENBERG, [REDACTED] 12-2, Page 11, that at the time JULIUS ROSENBERG moved into 18 Morris Street, New York City, he furnished to the Knickerbocker Village Corporation the name of Mrs. MIRIAM ROSENBERG, 109 Avenue A, New York City, as a reference.

b7D
b7C

MEMPHIS, TENN 6/19/56

Re: HENRY HENRIK ROSENBERG
ESPIONAGE - R

Re: LOUIS ROSENBERG, TRIN
IS - R

HENRIK ROSENBERG is the mother of HENRY and MIRIAM "MARTY" ROSENBERG. HENRIK ROSENBERG has also been referred to as ANNA ROSENBERG, MIRIAM ROSENBERG and MIRIAM ROSENBERG. Her maiden name has been set forth as both HENRIK and HENRIKMAN. She was at one time married to LOUIS ROSENBERG, the father of HENRY and MIRIAM, and on 7/14/48, married JOSEPH SCHWARTZ, whose name was formerly JOSEPH ROSENBERG. In 1944, SCHWARTZ was a Communist Party member.

On Page 92 of the report of SA LEE it is indicated that HENRIK ROSENBERG had been active in Communist Party affairs as recently as 1948.

In the report of SA E. JACK LEON dated 6/10/53, at St. Louis, Mo., in the case of HENRY HENRIK ROSENBERG, SA-C, information is set out that in a report made by Miss KMA J. WHITFIELD on 2/20/51, in connection with an American Red Cross investigation of the New York Chapter for Dependency Discharge, MIRIAM ANNA HENRIKMAN ROSENBERG and MIRIAM L. ROSENBERG resided at 31 Mt. Hope Place, Bronx, N.Y., sharing a five room apartment with friends JULIUS and EVEL ROSENBERG.

In the report of SA JAMES F. LEE, mentioned above, information is set out on page 30 that on 12/21/50, DAVID GREENGLASS was questioned by SA JOHN E. LEWIS regarding receipt of \$45 on 3/10/47 and \$63 on 4/15/47, from HENRY ROSENBERG for the HENRY ROSENBERG job by the E and E Engineering Company. The E and E Engineering Company was owned by JULIUS ROSENBERG, DAVID and BERNARD GREENGLASS and IRVING GOLDBERGER. In the report of SA LEE, mentioned above, on Page 3 it is indicated that IRVING GOLDBERGER, 10 Monroe Street, New York City, was a cousin by marriage of HENRY ROSENBERG.

In connection with another investigation, DAVID GREENGLASS was re-interviewed by SA MYRTLE G. BRY on 3/17/54, at the Lewisburg, Pa., Penitentiary, and furnished the following information regarding the MIRIAM ROSENBERG family:

GREENGLASS said that, according to his recollection, JULIUS and EVEL ROSENBERG did room in an apartment at 123 Avenue A, New York City, with a MIRIAM ROSENBERG. It was GREENGLASS' opinion that MIRIAM was not related to JULIUS. He recalled that MIRIAM had a son named HENRY and a daughter named "MIRIAM." He said he was told by JULIUS that MIRIAM ROSENBERG and family were "Communists." GREENGLASS advised that the JULIUS ROSENBERGS and MIRIAM ROSENBERG were good friends and visited at each other's homes. He added he possessed no information that any of MIRIAM's family ever engaged in espionage activities.

MEMPHIS, TENN 4/10/56

Re: HENRY ROSENBERG
ESPIONAGE - R

Re: LOUIS BERNARD TAIEN
IS - R

According to the report of SA LAMM, HENRY ROSENBERG was born 1/27/29, at Philadelphia, Pa.. From 1936 to 1937, he worked at the Wallack Collision Works, 444 Whitlock Avenue, New York. From 1937 to 1939, he worked at Peerless Laboratories, 115 East 3rd Street. From 1939 to 1941, he worked at the Electro-Chemical Engineering Company, Brooklyn, N.Y., and from 1941 to 1943, at the Philadelphia Navy Yard. In the report of SA MICHAEL J. KIMMEL, Jr. dated 1/11/56, on HENRY ROSENBERG, IS-R, it is stated that during the time of his active Army service he was assigned to a demolition unit of the Army.

HENRY ROSENBERG was interviewed in Philadelphia on 2/25 and 3/10/56. He admitted having been a member of the Communist Political Association but denied ever having been a member of the Communist Party. During the interview he appeared to be friendly and expressed a desire to cooperate. He furnished limited information. He did say that WILLIAM TRYAN (Bufile 100-10000) who is presently believed to be a member of the Industrial Section of the Communist Party, Eastern Pennsylvania and Delaware, was the President of International Workers Order Lodge 32 and was the individual to whom he (ROSENBERG) at that time mailed his International Workers Order dues.

It is felt that if ROSENBERG sincerely desires to cooperate, he could furnish information which should throw considerable light on the case of Dr. LOUIS B. TAIEN. However, before consideration is given to re-interviewing ROSENBERG, it is felt that because of his association and the association of his mother with JULIUS ROSENBERG, an Espionage-R type of investigation should be conducted regarding HENRY ROSENBERG. This will be done, and the Bureau will be kept advised of developments.

It is noted in the report of SA LAMM that a photograph of subject ROSENBERG is available in his Navy Department employment folder. It is therefore requested that copies of this photograph be obtained by SA Louis and furnished Philadelphia.

Information copies of this letter have been designated for the Bureau and New York files on JULIUS ROSENBERG inasmuch as information is set forth concerning the possible association of HENRY ROSENBERG with JULIUS ROSENBERG.

cc - Nichols
Belmont
Lee

RECORDED - 86

Mr. William P. Rogers
Deputy Attorney General (orig. & 1)
5-5521 Attention: Mr. E.

June 22, 1956

Attention: Mr. E. Robert Seaver

Director, FBI

FULIUS ROSENBERG, with aliases, et al
ESPIONAGE - R

EX - 120

8510-22

Reference is made to our letter of June 19, 1956, relative to action being planned by United States Information Agency to combat the world-wide effects of the letter written to the "Manchester Guardian" by Bertrand Russell, British philosopher, and other anti-American propaganda being circulated concerning this case.

It is noted that with regard to dissemination was given by the National Committee to Secure Justice in the Rosenberg Case to the affidavits filed by Morton Sobell in his petitions for a new trial filed in the District Court, Southern District of New York, in May, 1956. XXXXXXXXXXXXXXX

On June 20, 1950, Irving M. Kaufman, District Judge, Southern District of New York, rendered his decision in a forty-seven-page opinion which denied Sobell's petitions for a new trial. This opinion completely reviews the entire Sobell case presented at the trial and answers fully and completely many of the false and wild accusations made by Sobell in his affidavits. It is suggested that widespread dissemination of this learned opinion could do much toward answering the scurrilous attacks made on the United States judicial system and Government through the propaganda circulated by the National Committee to Secure Justice in the Rosenberg Case.

The above suggestions are furnished to you for whatever action you consider advisable.

Tolson _____
Nichols _____
Boardman _____
Belmont _____
Mason _____
Mohr _____
Parsons _____
Rosen _____
Tamm _____
Nease _____
Winterrowd _____
Tele. Room _____
Holloman _____
Gandy _____

65-68296

- 101-2463 (MORRIS) Exempt from GDS, Category 1
Reason for Denial Indefinite

100-387885 (National Committee to Secure Justice in the Rosenberg Case)

JPL: (8)

JUL 12 1956

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TIME 4:25 PM

DATE 0-25-56

BY RAZ

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Office Memorandum

UNITED STATES

GOVERNMENT

TO : Director, FBI
 FROM : Legal Attache, London (65-919)
 (65-0-681)

DATE: June 29, 1956

SUBJECT: JULIUS ROSENBERG, was;
 ESPIONAGE - R
 (Bufile 65-58236)
 MORTON SOBELL, was;
 ESPIONAGE - R
 (Bufile 101-2483)

ReBulet 4-11-56 in the first captioned matter, requesting that discreet inquiries be made regarding BERTRAND RUSSELL's arrest and imprisonment in England during World War I (S) u

Further discreet inquiries are being made and when completed, the Bureau will be further informed. (S) u

JAC:CFJ
 (6)

- P -

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EX-128

JUL 10 1956

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71 JUL 18 1956

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- ☐ Information pertained only to a third party. Your name is listed in the title only.
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Dear Louis:

In accordance with our telephone conversation of today, I am attaching a copy of Ed DeGrazia's letter, and several copies of Glazer's piece on the Rosenberg-Sobell case. I am also attaching a copy of DeGrazia's review of Sharp's book, which has not yet been published.

/s/ Irving Ferman

Julius Rosenberg

3 ENCLOSURE

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with original
fw

165-58236
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133 JUL 26 1956

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INITIALS ON ORIGINAL

55 AUG 7 1956

BULKY EXHIBIT - INVENTORY OF PROPERTY ACQUIRED AS EVIDENCE

Bufile: 65-58236

NY

Field Division

8/1/56

Date

Title and Character of Case:

JULIUS ROSENBERG
IS-C

Date Property Acquired:

7/7/50

Source From Which Property Acquired:

APARTMENT OF JULIUS ROSENBERG,
10 MONROE ST., NYC, APT. 11-GE

Location of Property or Bulky Exhibit:

VAULT

Reason for Retention of Property and
Efforts Made to Dispose of Same:Possible evidence in future
prosecution of other members of the
ROSENBERG espionage network.Description of Property or Exhibit and
Identity of Agent Submitting Same:

SA WILLIAM F. NORTON

123. 1 large paper shopping bag with handles containing the following:
124. Can of Kodak acid fixer.
125. One can of Kodak microdel developer.
126. One small funnel.
127. One large glass graduate measuring jar.
128. One adjustable roll film developing tank.
129. One stainless steel thermometer.
130. One paper bag from Willoughby Camera Shop, NYC, containing a stirrer.
131. One small cloth bag containing 38 miscellaneous keys.
157. One Remington portable typewriter, serial # V 290917. On the face of the typewriter is scratched the following - Evelyn March.

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Field File #: 65-15348 (#6)

F452

cc 66-6649

AUG 8 1956

65-58236
NOT RECORDED

AUG 7 1956

SAE

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (65-58236)
 FROM : SAC, CHICAGO (65-3437)
 SUBJECT: JULIUS ROSENBERG, Was.
 ESPIONAGE - R

DATE: August 2, 1956

Re Chicago letter to Bureau dated June 19, 1956.

Enclosed is one copy of the book "Was Justice Done" by Professor MALCOLM SHARP which was purchased from the Post Office News Co., 37 West Monroe Street, Chicago, Illinois, on July 25, 1956.

RUC.

Encl. - 1 ENCLOSURE
 2 - Bureau (RM)
 1 - Chicago
 RVW:MKR
 (3)

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EX-120

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American Radicals: Problems and Personalities On Press

MONTHLY REVIEW PRESS

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SHARP

WAS
JUSTICE
DONE?

WAS JUSTICE DONE?

The Rosenberg-Sobell Case

by

MALCOLM P. SHARP

Professor of Law, University of Chicago

with an Introduction by

HAROLD C. UREY

*Martin A. Ryerson Distinguished Service Professor,
Department of Chemistry
and Enrico Fermi Institute for Nuclear Studies,
University of Chicago*



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WAS JUSTICE DONE?
THE ROSENBERG-SOBELL CASE

WAS JUSTICE DONE?

The Rosenberg-Sobell Case

by

MALCOLM P. SHARP

Professor of Law, University of Chicago

with an Introduction by

HAROLD C. UREY

Martin A. Ryerson Distinguished Service Professor,

Department of Chemistry

and Enrico Fermi Institute for Nuclear Studies,

University of Chicago



MONTHLY REVIEW PRESS

New York 1956

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Chronology

NOTE. Matters of public knowledge and uncontested testimony appear without brackets. Matters of testimony which were controverted, or uncorroborated, or corroborated only by accomplice testimony, appear within brackets.

1939

February. Julius Rosenberg graduates from City College, New York, with degree in electrical engineering.

June. Julius Rosenberg and Ethel Greenglass marry.

1940

Julius Rosenberg begins work for Army Signal Corps.

1942

Julius and Ethel Rosenberg move into apartment in Monroe Street, Knickerbocker Village, New York.

[Elizabeth Bentley testifies that this year and in 1943 she receives five or six telephone calls from "Julius."]

1944

In 1944-1945 David Greenglass, in the Army, works as machinist at Los Alamos.

In 1944-1945 Evelyn Cox works as cleaning woman for the Rosenbergs [and testifies to seeing console table].

[In 1944-1945 Julius Rosenberg testifies to buying console table at Macy's.]

[June. Max Elitcher testifies that Julius Rosenberg proposes that Elitcher engage in espionage at Navy Ordnance Bureau.]

[November-December. Ruth Greenglass testifies that Julius Rosenberg asks her to get information from David Greenglass about Los Alamos; that she visits him in Albuquerque, gets information, and gives it to Julius Rosenberg in New York.]

1945

[January. The Greenglasses testify to furnishing the Rosenbergs with information concerning "lens mold"; and to arranging for further espionage, with New Mexico rendezvous and identification by torn Jello box; and David Greenglass testifies to his automobile ride with the "Russian."]

[February. Julius Rosenberg testifies to Ruth Greenglass's telling him of David Greenglass's "taking things" from Army.]

February. Julius Rosenberg dismissed from Army Signal Corps on charges relating to "Communism." Shortly afterward he takes job with Emerson Radio Company.

[June. Harry Gold and the Greenglasses testify to meeting in New Mexico, identification with Jello box; David Greenglass gives further information on lens mold, Gold gives him \$500.]

[September. The Greenglasses testify to David Greenglass's giving the Rosenbergs "cross section sketch" of "the bomb itself," with explanation and other information, which Ethel Rosenberg types up into twelve pages of notes.]

[September. Max Elitcher testifies to Julius Rosenberg's second unsuccessful attempt to enlist him in espionage.]

1946

Julius Rosenberg sets up first of succession of small businesses operating machine shop which continue until his arrest in 1950.

Klaus Fuchs leaves United States for Great Britain.

Anatol Yakovlev leaves United States for Soviet Union.

[The Greenglasses testify to first seeing console table, according to Ruth Greenglass with a built-in microfilming device, at Rosenbergs' apartment.]

1948

[July. Max Elitcher testifies to being followed on drive from Washington to New York, going first to Morton Sobell's house, then with him to vicinity of Rosenbergs' apartment; disposal of 35-millimeter film can.]

1950

February-March. Klaus Fuchs arrested in England, tried, convicted on basis of confession of furnishing atomic information to Soviet Union, and sentenced to fourteen-year term.

May. Julius Rosenberg inquires of Dr. George Bernhardt as to inoculations required for visit to Mexico.

May. Harry Gold arrested in Philadelphia on basis of confession that he had engaged in espionage with Fuchs and Yakovlev.

[May-June. Ben Schneider, photographer, testifies to taking 36 passport photos of Rosenberg family.]

[May-June. Julius Rosenberg testifies to David Greenglass's asking him for money. David Greenglass testifies to Julius Rosenberg's giving him \$5000.]

June 15. David Greenglass arrested.

June 16. FBI call at Rosenbergs' apartment. Fabricant-Rogge interoffice memo concerning David Greenglass.

June 17 (?). David Greenglass's handwritten statement for Rogge office.

June 22. Morton Sobell and family go to Mexico.

June 25. Beginning of Korean War.

July 17. Julius Rosenberg arrested.

August 11. Ethel Rosenberg arrested.

August 17. First indictment. Superseding indictments were filed October 10, and January 31, 1951, the latter serving as the basis for the trial.

August 18. Morton Sobell "deported" from Mexico to United States.

October. Rosenbergs' apartment closed, furniture and effects disposed of.

December 9. Harry Gold sentenced to thirty-year term.

1951

March 6-March 29. Trial of Julius Rosenberg, Ethel Rosenberg, Morton Sobell, and David Greenglass, United States

District Court (New York Southern District), before Judge Irving R. Kaufman. Verdict of jury: Guilty.

April 5. Julius Rosenberg and Ethel Rosenberg sentenced to death by electrocution. Morton Sobell sentenced to thirty-year term.

April 6. David Greenglass sentenced to fifteen-year term.

1952

February 25. Second Circuit Court of Appeals affirms judgments of District Court.

October 13 and November 17. United States Supreme Court, on petition and on application for reconsideration, declines to review the case, Justice Black dissenting on petition.

December 10. Motions for new trial and for stay of execution argued before Judge Sylvester Ryan, District Court; both motions denied.

December 30. Motion to reduce sentence argued before Judge Kaufman.

December 31. Court of Appeals affirms denial of motion for new trial.

1953

January 2. Judge Kaufman denies motion to reduce sentence.

January 5. Court of Appeals denies motion for stay.

January 8. *New York Times* publishes letter of Dr. Harold Urey.

January 10. Petition for clemency submitted to President Truman.

January 20. President Eisenhower inaugurated.

February 17. Court of Appeals orders stay of execution while motions are appealed to Supreme Court.

March. Console table discovered in elder Mrs. Rosenberg's apartment.

April 13. Discovery of table reported in *National Guardian*.

April 16. Article in *Osservatore Romano* urging clemency.

May 25. Supreme Court again denies review of the case, Justices Black and Douglas dissenting.

June 8. Defense statutory motion and motion for new trial argued before Judge Kaufman; both motions denied.

June 9. Both motions appealed to Court of Appeals.

June 11. Court of Appeals affirms denial by Judge Kaufman.

June 12. Petition to Supreme Court to review decisions, and for stay pending full preparation.

June 13. Argument by defense and Government in chambers of Justice Jackson, Supreme Court.

June 15. Supreme Court, by 5 to 4 vote, declines to hear defense oral argument. It also denies stay of execution, Justices Black, Frankfurter, Douglas, and Jackson dissenting. Court adjourns for summer. Application for stay to Justice Douglas, on grounds related to original application.

June 16. New motion filed by attorneys for Edelman, an interested citizen, with Justice Douglas, on ground that penalties of Atomic Energy Act rather than of Espionage Act are applicable.

June 17. Justice Douglas grants stay of execution pending argument of this point.

June 18. Chief Justice Vinson reconvenes Court, which hears argument on this point, including argument for further time for its consideration.

June 19. Supreme Court vacates stay of execution, Justices Black, Frankfurter, and Douglas dissenting, and denies motion for further stay to consider petition for clemency.

June 19. Execution of Rosenbergs is advanced from 11 P.M. to avoid conflict with Jewish Sabbath.

June 19. President Eisenhower denies clemency.

June 19. Shortly after 8 P.M., Julius Rosenberg and Ethel Rosenberg are electrocuted.

Introduction: A Layman's View of the Case

HAROLD C. ÜREY

MUCH has been written and spoken about the Rosenberg case in the newspapers and magazines and on the radio, and hence another discourse on this subject may seem superfluous. However, scientists know that popular presentations of scientific subjects are inadequate, and I believe this is also true of other fields of information. In particular the press and radio quote statements and draw conclusions from them, but seldom explain the reasons for the statements or for the conclusions.

When I presented my first statement on the Rosenberg case, I feared that I might have made some error of fact concerning the case. This has apparently not been so. I have been denounced, called presumptuous, misrepresented as to my stand on the case, but no one has shown that my statements were in error. I am convinced that the great public should become acquainted with the facts, and that only a few people have read the transcript of the case and hence attempted any analysis of the data for themselves. The transcript is rather long, and badly organized when judged by the standards of detective fiction, but very dramatic nevertheless.

The alleged conspiracy is represented by the diagram (Figure 1). In this diagram an arrow pointing from individual A to individual B means that A testified that he had contact on espionage matters with B. No such arrow means that the individual denies such contact or there is no testimony. A broken line means assumed espionage contact but no evidence or only indirect evidence. Gold admitted that he gave information to Yakovlev, but Yakovlev escaped from the United States and was not apprehended. Gold and Fuchs both admit contact. The Greenglasses admit that they gave information to Gold and that they received \$500 from Gold which he said he received from Yakovlev. The money was accounted for in the Greenglasses' bank account. They agreed that they matched portions of the side of a torn cardboard "Jello" box—one of the twelve alleged "overt acts" on which the Rosenbergs were indicted. Gold said he received his half from Yakovlev. The Greenglass portion was in Mrs. Greenglass's handbag and she said she had received it from Julius Rosenberg in the Rosenberg apartment. The guilt of the Greenglasses and Gold was agreed to by all three of them. The Rosenbergs denied dividing the Jello box side and denied having given a portion to the Greenglasses.

The Greenglasses say that they gave information to the Rosenbergs and that they were recruited into espionage by the Rosenbergs. The Rosenbergs denied this, and denied that they had anything to do with espionage of any kind. They maintained that their contacts were the normal relations of in-laws. (Mrs. Rosenberg was David Greenglass's sister.) Elitcher and Sobell were college acquaintances of Rosenberg. Elitcher testified that he and Rosenberg discussed espionage several times, although he maintained that he and Rosenberg never gave each other any secret information. Elitcher had been a Communist; he had sworn

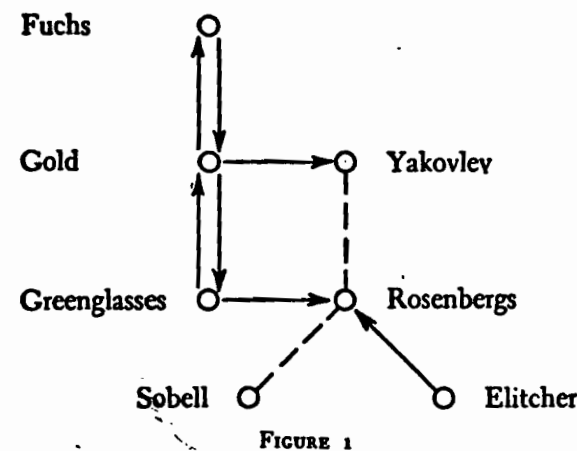


FIGURE 1

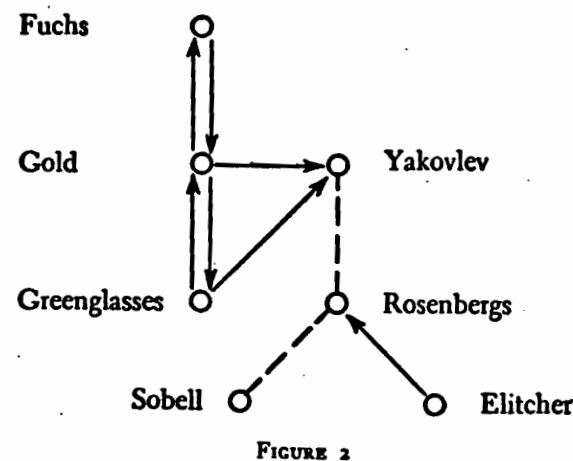


FIGURE 2

mony about the division of the box side is there any confirmation of the Greenglass testimony by a third party.

The identification code between Gold and Greenglass consisted of the two parts of the Jello box side and the remark "I come from Julius." This is nearly confirmation by a third party. However, Julius is a common Jewish name and it occurs twice in this affair, once as the given name of Rosenberg and second as a middle name of Fuchs. But why did not the government pursue this more closely? It is interesting that Greenglass in the pretrial statement to his lawyer said that he did not know who sent Gold to him. This would seem to me to indicate sound espionage practice. I doubted this statement that the arch conspirator's name was used in identification codes, either over the telephone or otherwise.

I doubt the entire testimony of Greenglass and his wife because of my disbelief in the details of their testimony.

Alternatives

If the Greenglasses had direct contact with Yakovlev or other Russian agents all the requirements of the other testimony are met. A Jello box side was divided. Gold presented one half at Albuquerque which he said he got from Yakovlev. The Greenglasses had the other half which they said they received from Rosenberg. On this basis Rosenberg gave the other half to Yakovlev and he in turn gave it to Gold. But suppose Yakovlev divided the side and gave one half to Gold and the other to Greenglass or to Mrs. Greenglass. In this case Rosenberg was unnecessary. Also, the Greenglasses can tell a very realistic tale of the division by substituting the Rosenbergs for Yakovlev. In fact the inclusion of the Rosenbergs in the conspiracy makes no sense at all. They are unnecessary unless Julius was indeed the head of a big espionage ring, and the proof of the existence

of that ring is nonexistent up to the present time. If only the Rosenbergs had confessed! But we are reasoning in circles. The Rosenbergs were unnecessary to the plot and would have been only another point where the entire espionage effort could have been discovered. If Yakovlev or another Russian could contact the Rosenbergs, why could he not contact the Greenglasses, and then why pass \$5000 through the Rosenbergs' hands instead of giving it to the Greenglasses directly? Would you confess to being the head of a nonexistent spy ring and let your children live under that stigma, or would you go to the electric chair maintaining your innocence? The letters of the Rosenbergs written to each other in Sing Sing prison give their answer to exactly this question.

Motives

Elitcher had committed perjury and at the time of his testimony had not been indicted, tried and sentenced. He has not been so indicted or tried since. Had he been sentenced, no matter to what term, at the time of his testimony he would still have been anything but a reliable witness. I do not trust Communists or ex-Communists or perjurers, and I am sure this view is shared by many others, but when pressure is put on such people, I trust them to do whatever they think necessary to get themselves out of their difficulties, especially when wives and children are involved. Surely Elitcher was tempted to give the testimony that the government wished to have.

The Greenglasses have admitted to a crime for which the maximum penalty is death. It is a custom in the United States to give consideration in sentencing a criminal to the degree of cooperation which he has given to the law enforcement authorities during the preparation and prosecution of the case. I suppose that criminals are advised of this situa-

tion by their attorneys or in other ways. At the time of the trial, David Greenglass had been indicted and was formally a defendant, but had not been sentenced, and the sentence could have been death. Ruth Greenglass has never been indicted and she was not a defendant in the trial. David Greenglass was given a fifteen-year prison sentence. It seems to me that the hope of lenient treatment must have constituted a motive for cooperation with the prosecution.

But "cooperation" is not synonymous with perjury and accusation against innocent people. Or is it? Does it not depend on what the facts are? If the Greenglasses' contact was Yakovlev and not the Rosenbergs (see Figure 2), the revelation of this fact would have given the government nothing since Yakovlev was in Russia. What takes place in a criminal's mind when he is trapped and the electric chair appears in his dreams? I do not know, but it seems likely to me that both the Greenglasses would have confidently expected thirty-year prison terms if they had admitted that their contact was with Yakovlev or some other agent of the USSR.

In addition to other difficulties, the family business altercation seems to have been serious. Most of us do not let our anger lead to the execution of a sister in the electric chair, but then we are not criminals. Judge Kaufman, in denying the motion for a new trial, noted that the Greenglasses had not confessed to perjury in the case, and expressed wonder that they had not done so if the Rosenbergs were innocent. The Greenglasses will not confess, for statutes of limitation do not protect them, and Ruth Greenglass can still be tried while the maximum penalty is still death.

People ask why the prosecuting attorney and the FBI and the judge should wish to see two insignificant people put to death unjustly. After considerable conversation with lawyers

on this subject, including one who worked on the government side of the case, I conclude that lawyers are more interested in the law than in justice. Mostly they are interested in whether all the legal machinery functions according to all the rules, and are not in the least interested in the argument presented in this paper. There are exceptions of course, as for example Professor Sharp, who helped the defense during the last weeks of the case without remuneration once he believed that a serious miscarriage of justice had occurred.

However, it is my belief that the prosecution believed the Rosenbergs guilty. Once having believed the Greenglass account and having based the prosecution on this, it would be difficult to adopt another point of view later. In fact, people do not allow themselves to be convinced that they made such a horrible mistake as I believe has occurred. Once the government adopted its theory of the case, all concerned with it were trapped and were forced to continue to believe it.

Conclusion

I doubted the testimony of the Greenglasses as soon as I read the transcript. Sir Arthur Conan Doyle might have been fooled by the evidence, but Sherlock Holmes would not. But doubt of guilt is not equivalent to certainty of innocence. I discussed these matters with Professor Malcolm Sharp and Professor Harry Kalven of the University of Chicago Law Department. They were not convinced of the correctness of my conclusions. However, the console table was reported found at last, and Professor Sharp investigated the situation himself and concluded that the witnesses to the story of the table were convincing and that the delay in producing the table was understandable. The table was what the Rosenbergs said it was and showed that

the Greenglasses committed perjury. He concluded that the Rosenbergs were innocent and joined the defense during the last weeks of the case. This additional evidence substantiating my suspicions has convinced me that the jury's verdict of guilty was incorrect and that the Rosenbergs were not "guilty beyond a reasonable doubt."

But what can be accomplished by bringing up these matters after the Rosenbergs have been executed? This case is of interest to all who work on secret military matters, for such people are less secure than they were previously. This practice of giving immunity to criminals in payment for testimony is particularly pernicious. One criminal accuses another who again accuses another until perhaps an innocent person is accused and then the chain is broken and we give the maximum punishment to the innocent person. The system encourages criminals. If you wish to commit a crime, pick out one of your "friends" or a relative whom you do not like, compromise him in various ways (e.g. ask him to ask his physician about necessary inoculations for a trip to Mexico), then commit the crime and if caught give evidence against your "accomplice" and go free! Or perhaps someone else is doing this and you are the "accomplice" without knowing it at all. This practice sets the stage for "framing" innocent people, and people who carry military secrets in their minds are particularly threatened. Moreover, Communism and espionage are not fought by executing innocent people.

I also suggest that the reader look over the evidence against Morton Sobell and see whether he thinks that the government proved enough to justify a sentence of a thirty-year prison term in Alcatraz. He pleaded "not guilty" but on the advice of his lawyers did not take the stand. I also do not understand why he should not have done so, if he is innocent. But we have a system of law that requires

that the government prove that the accused is guilty, not that the accused shall prove himself innocent. The proof of the guilt of Morton Sobell is far from satisfactory to me.

I have been interested in this case and shall be interested in other similar cases because of my concern for the integrity of justice in this country. To review a case in which we believe injustice has been done and in which the accused are beyond our power to be still further injured is better than reviewing the next case when further injustice may be done. I commend Professor Sharp's objective and critical review of this case to thoughtful students and patriotic critics of American justice.

HAROLD C. UREY

Author's Preface

DR. KLAUS FUCHS, a first-rate physicist, the most important of all atomic spies, worked in the United States during the war on the development of the atomic bomb. He was a refugee from Germany, a naturalized Englishman, employed by the British. He returned to England in 1946, to work there on atomic energy. In 1950 he was arrested. He made a confession which, though it was not made public, indicated that he had transmitted secrets about atomic energy, presumably including secrets about advanced developments in the physics of atomic energy, to Russian agents.

Information discovered in connection with his arrest apparently led to the arrest of Harry Gold, an American, trained as a chemist and employed in industry. He confessed that on a number of occasions he had served as a courier while Fuchs was in America, transmitting information from Fuchs to a Russian agent, Yakovlev, who also had left the country in 1946.

Gold confessed also that on one occasion, stopping off in Albuquerque, New Mexico, on his return from a visit to Fuchs in Santa Fe, in June of 1945, in accordance with Yakovlev's instructions, he picked up some information from David Greenglass. David Greenglass was a machinist from New York City, an enlisted man who rose to technical sergeant, working at the Los Alamos atomic energy

project. He worked particularly on the mechanical features of a detonating device under the direction of a physicist in charge of experiments to develop and perfect the device. Gold informed the authorities that he had gotten information about the device from Greenglass, and—apparently as a consequence—Greenglass was arrested.

He and his wife in turn implicated David Greenglass's sister, Ethel Rosenberg, and her husband, Julius Rosenberg, as intermediaries who made some preparation for Gold's visit on the occasion about which Gold had told the authorities, and who had also gotten two other important items of information from the Greenglasses about the work at the Los Alamos project, for transmission to unknown Russian agents. The Rosenbergs denied the charges.

They were, however, indicted for participation in a conspiracy. The conspiracy included not only the major supposed acts of atomic espionage, but some supposed unsuccessful attempts to get non-atomic secret information, particularly information from the Bureau of Ordnance of the Navy. Because of his supposed connection with this latter espionage, and with one act of unidentified character, the Rosenbergs' acquaintance, Morton Sobell, was indicted for participation in the same conspiracy. He was convicted and sentenced to thirty years' imprisonment, which he is now serving. The Rosenbergs were convicted, sentenced to death, and executed.

Like Sobell, Julius Rosenberg was a graduate electrical engineer. He had been dismissed from a government job, in the Signal Corps, in 1945, on charges of Communism or Communist sympathies. He had then taken a job at the New York plant of the Emerson Radio Company, where he had done some of his work for the Signal Corps. Here he earned at one time what appears to have been his top figure, \$100 a week. After the end of hostilities he joined

in starting a small business, first selling surplus hardware, later running a machine shop. The business changed in personnel and character, for a time operating as a family business, including David Greenglass; succeeding modestly for a while, but in difficulties in 1950, when the Rosenbergs were arrested. They were at that time living in an apartment in Knickerbocker Village, a low-cost housing project in lower Manhattan.

The record is not conclusive on the question of the relationships of the Rosenbergs with Communism, but Julius Rosenberg testified clearly at the trial to his admiration for the accomplishments of the Soviet regime, an admiration which extended back at least to the war and continued until the time of the trial and afterwards. He spoke of the Russians' achievements in education and construction and their part in the war against Germany. He affirmed his loyalty to the United States, and said different countries might well choose different social and political systems. His wife seems to have been in general agreement with him. They had apparently been in the habit of discussing their views openly. They seem to have kept the hopeful and humanitarian, perhaps naive, views about Russia which were particularly widespread during the war, and which have become unpopular in the cold war.

The Rosenbergs appear to have been rather simple people, devoted to their two children and to each other, struggling with the problems of daily life, finding some refuge perhaps in their dream of a humane and equalitarian future. Each was reasonably articulate, but neither had Vanzetti's talent for expression.

I think that the average intelligent citizen, after considering the facts in this case, will come to doubt the justice of the conviction or at any rate will agree with me that a new trial should have been granted on the evidence disclosed in

the last defense motion. If he is at all familiar with legal procedure, he will almost certainly feel that the speed with which the final problems of this serious case were disposed of created a dangerous and unacceptable precedent.

As uncertainties about the justice of the conviction increase, so of course will any uncertainties which the reader may feel about the sentence and its execution. The most serious remediable result of the case today is the imprisonment of Morton Sobell in Alcatraz under a thirty-year sentence. The case against him should appear in all its weakness in Chapters 4, 5, 13, and 16.

I was engaged in the Rosenberg case at the end. What moved me, apart from a growing fear of serious injustice in a capital case of peculiar public concern, was a sense of the relationship of the case to public policy, both domestic and foreign. A calm estimate of spy scares seems to me part of a calm estimate of foreign quarrels, the resolution of which might help us preserve our liberties, promote prosperity, save taxes, and keep the peace. We shall come to this matter in the last chapter, but I want the reader to understand my motives at the start. The peculiar and limited character of my participation, and my sense of the public importance of presenting the doubts which are felt about the case in various circles, have overcome whatever reluctance I might otherwise have had to write about it.

This book was written in the autumn of 1953. Except for correction and clarification in detail, a comment at the end of Chapter 3, and the addition of Chapters 13 and 16, it has not been changed. In particular, the two concluding sections of the last chapter were written in 1953 as they stand. The appearance in 1955 of two thoughtful books on the subject—William E. Reuben's *The Atom Spy Hoax* and John Wexley's *The Judgment of Julius and Ethel Rosenberg*—led me to reconsider carefully the thesis of this

book. On reexamination, the theories of these recent books and the theory of this book seem to supplement rather than contradict each other; though on the information available to me, I consider the theory presented here somewhat preferable to the others. My review of the recent books, both of which are strongly recommended to the interested reader, appears as Appendix 4.

My indebtedness to Dr. Harold Urey and Mr. Stephen Love, of the Chicago bar, will be apparent as this essay proceeds. My colleague Professor Harry Kalven has been from the start a close student of the record of the case, critical and stimulating in conversation, outspoken in public discussion. Another colleague, Dean Bernard Loomer, has been helpful in private, as he was thoughtful and vigorous in his public participation in efforts for clemency.

Many workers on behalf of the Rosenbergs, too many to name, have contributed to my understanding of the case in the course of their efforts. The same groups are now working to secure the release of Morton Sobell. Mrs. Sobell and her children and the Rosenbergs' two sons must be remembered as the other survivors most affected by the events.

Finally, it is a source of satisfaction to record my association with and indebtedness to the lawyers in the case: Mr. Howard Meyer, in 1953 and 1954 counsel for Morton Sobell; Mr. Alexander Bloch, veteran of the trial, present with us often in that critical week of June 1953, in New York; Mr. John F. Finerty, independent and gallant in his participation in attempts to secure an adequate review of the case; Miss Gloria Agrin; and Mr. Emanuel Bloch. Mr. Bloch's heart attack and death on January 30, 1954, may well have been the result of his long labors on behalf of his friends, the Rosenbergs, and their sons. During the last two and a half weeks of the case, working with Miss Agrin and Mr. Emanuel Bloch, I came to think of them, with Mr.

Justice Black and Mr. Justice Douglas, as symbols of justice in a time of difficulty. It is an exceptional honor and a source of deep satisfaction to have been associated with them, however briefly and modestly, in the defense to which they gave so much.

WAS JUSTICE DONE?

The Uneasy Spectator

ON April 5, 1951, Julius and Ethel Rosenberg, having been convicted of conspiracy to commit espionage for Russia, were sentenced to death. Their trial had taken place, and the sentence was given, in the Federal District Court in New York City. The proceedings would be subject to review, in the ordinary course of events, by one of the strongest courts in the country, the Federal Court of Appeals for the Second Circuit.

A citizen might be critical of our foreign policy, and concerned over the fear and hatred toward dissidents at home that were part of our foreign policy; he might be distressed that the fear and hatred should be increased by a death sentence and its execution; or he might be merely opposed to death sentences. However, no matter what views he held, the average citizen would expect that the Rosenbergs would be treated justly.

Further knowledge and reflection might increase one's doubt about the sentence. The critical acts of conspiracy charged were concerned with atomic espionage. David and Ruth Greenglass alone testified to the Rosenbergs' part in them. David Greenglass, a younger brother of Ethel Rosenberg, was a machinist, a private who became a technical sergeant stationed at the Los Alamos atomic project in 1944 and 1945. He confessed to his own participation in three critical episodes of atomic espionage. In 1944 at the

request of his wife, Ruth, he sent out, by her, information about the names of top scientists working at Los Alamos and about the physical aspects of the project. Ruth Greenglass testified that she had acted at the Rosenbergs' request, and brought the information back to them. The Rosenbergs denied her statements, as they denied every conspiratorial act charged against them.

The second episode consisted of a sequence of events from January to June 1945. After preliminary steps at home in New York on leave and arrangements for identification made then with his wife and the Rosenbergs, David Greenglass gave Harry Gold, a confessed spy courier for the Russians, atomic information, particularly information about a detonating device for the bomb. Gold got the information on a visit to the Greenglasses in New Mexico. The third episode occurred in New York in September 1945. David Greenglass testified that here he gave a "cross section" sketch of a post-Hiroshima atomic bomb, with accompanying notes, to Julius and Ethel Rosenberg.

David and Ruth Greenglass alone testified to the connection of the Rosenbergs with any of these episodes. Gold testified to his part in the second episode, the passing on of information about the "lens mold." But his relationships in this episode were exclusively with the Greenglasses and with his superior in his work, the Russian, Yakovlev, who had disappeared in 1946.

At the end of the trial, David Greenglass was sentenced to fifteen years' imprisonment. No proceedings were ever started against Ruth Greenglass; she is free.¹ Gold, on the

¹Her testimony against her husband might in some circumstances have been somewhat limited in its effect by a marital privilege, though the existence and extent of the privilege have been matters of some doubt in the federal courts. The possibility may have helped the Greenglasses' bargaining power a little. But if they had both been brought simply to confess and plead guilty, her privilege, like his privilege against self-incrimination for example, would have been useless. Gold's evidence was in any event

evidence of his own confession, had, on December 9, 1950, been sentenced by another court to thirty years' imprisonment. Morton Sobell, who was tried along with the Rosenbergs and, like them, pleaded not guilty, was sentenced to thirty years' imprisonment. Allan Nunn May and Klaus Emil Julius Fuchs, first-rate British physicists, had confessed to giving secrets which the Joint Committee on Atomic Energy of our Congress in April 1951 considered in each case more important than anything which David Greenglass had confessed to transmitting. In England, May had received a ten-year sentence, and Fuchs—by far the most important of atomic spies thus far—had received a fourteen-year sentence, the maximum under British law. The contrast between the sentences (and in Ruth Greenglass's case, the immunity) given to confessed spies, and the death sentence given to the Rosenbergs, who steadfastly maintained their innocence, was disturbing to many.

There was a general recognition that the Greenglasses had almost certainly won leniency by implicating the Rosenbergs. The expectation of lenient treatment was, at the least, one incentive to implicate others. The use of this incentive was later illustrated when government officials gave hope to the Rosenbergs up to the time of their execution that their lives would be spared if they would name others as participants in conspiracy.

On the assumption that the Rosenbergs had been properly convicted, the inequality in the treatment of spies was thus still a peculiar source of uneasiness. May and Fuchs had done much or all of their spying in this country. It was indeed as a secondary feature of a trip to New Mexico

available against them both. Dr. Fineberg's apology for the lenient treatment of Mrs. Greenglass is thus unpersuasive. See S. Andhil Fineberg, *The Rosenberg Case*, pp. 104-105 (1953). See below, Chapter 10, pp. 116-119, for Dr. Fineberg's only other contribution to the discussion of the merits of the case. See Appendix 4, note, p. 214 below.

to see Fuchs that Gold stopped to get from Greenglass the lens mold information, perhaps the most important information Greenglass had to give. (It is not clear that the "cross section" was more important, though more was made of it at the trial.) Greenglass's information was of the sort which a moderately capable machinist could supply. Fuchs was a first-rate scientist. He may well have given the same information that Greenglass confessed to giving, which was indeed of considerable value. If Fuchs did not give this same information, it is only because he was preoccupied with the much more novel and difficult information about the physics, mathematics, and chemistry of the new explosive, which he confessed he did transmit.

The relation of Greenglass to the history of atomic espionage is thus not on any view of the facts a simple one. Yet in imposing sentence on the Rosenbergs, Judge Kaufman said: "... your conduct in putting into the hands of the Russians the A-bomb . . . has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 . . ." Combining, as it does, an insupportable view of both the history of atomic espionage and the history of the Korean outbreak with a retaliatory theory of punishment, the Judge's explanation of his action is an additional factor in the disquiet which may be felt by an observer, still unwilling to question the convictions, about the wisdom of the sentence.

Moreover, as it turned out, the Federal District Judge who tried the case, Judge Irving Kaufman, alone determined the sentence. The trial was reviewed once by the Court of Appeals for the Second Federal Circuit; and on two later occasions, questions about the conduct of the trial and the total evidence of guilt were considered by that court. Following a well-established line of federal authorities, however, the court held that, if it allowed the conviction

to stand, the governing federal statute denied the Court of Appeals power to change the sentence fixed by the District Court, provided it was within the limits set by law. The interpretation of the federal statute in question is not free from difficulty, as the Court of Appeals clearly recognized. Somewhat similar state statutes have been interpreted differently by some state courts, notably the Pennsylvania Supreme Court.² The question has never been determined by the Supreme Court of the United States.

Contrary to a general impression, no question about the Rosenberg case, except the final question about the application of the Atomic Energy Act in a form in which it was raised by lawyers not representing the Rosenbergs, was ever decided by the United States Supreme Court. That Court, on each occasion when the case was presented to it, clearly and simply declined to consider it. That is all that a "denial of certiorari" means: it is a considered refusal to order that the case be presented to the Supreme Court for full consideration.

Mr. Justice Black made the following observations about efforts to secure a review of the case by the Supreme Court, in his dissenting opinion of June 19, 1953, the day of the Rosenbergs' execution:

I may add that I voted to grant certiorari originally in this case. That petition for certiorari challenged the fairness of the trial. It also challenged the right of the Government to try these defendants except under the limited rules prescribed by the Constitution defining the offense of treason. These I then believed to be important questions. In motions for rehearing, the arguments as to the unfairness of the trial were expanded, and I again voted for review. I have long thought that the practice of some of the states to require an automatic review

² *Commonwealth v. Garramone*, 307 Pa. 507 (1932), with an annotation in 89 A.L.R. 291 (1934). See also *Commonwealth v. Sterling*, 314 Pa. 76, 78 (1934).

by the highest court of the state in cases which involve the death penalty was a good practice.

It is not amiss to point out that this Court has never reviewed this record and has never affirmed the fairness of the trial below. Without an affirmance of the fairness of the trial by the highest court of the land there may always be questions as to whether these executions were legally and rightfully carried out. I would still grant certiorari and let this Court approve or disapprove the fairness of the trials.

On one occasion, when a petition for certiorari to review the second decision in the case made by the Court of Appeals was before the Supreme Court, one of the Justices took a somewhat unusual step. Mr. Justice Frankfurter not only indicated the limited function of petitions for certiorari, and decisions about them, by questioning the practice of dissenting from such decisions; he also recorded, without supporting it, his opinion that the Court of Appeals had correctly decided that no other court has power to modify a sentence, within the limits set by law, fixed by the federal judge who has tried a case.

Questions about whether a law limits a sentence may, of course, be raised on appeals from Federal District Courts. On appeal from the original conviction, and by two separate motions (different from the motions concerned with evidence and guilt), counsel for the Rosenbergs raised questions about the applicable law defining the limits of sentences.

They argued for example on the first appeal that the death sentence violated the constitutional prohibition against "cruel and unusual punishments," relying in part on the lesser sentence provided in case of prosecution under the Atomic Energy Act where the acts charged were done with intent to benefit a foreign country but without intent to injure the United States. (See the opinion of Chief Jus-

tice Vinson on the final phase of the case in 346 U.S. at 282 n. 10. This opinion is a convenient source of citations to opinions and orders in the case, and to the course of proceedings in the courts.) Counsel argued again on the same appeal that the rule of evidence and the limit of severity expressed or implied in the treason clause of the Constitution were not respected in the trial and the sentence of the Rosenbergs. As they were concededly not helping an "enemy," no lawyer familiar with the case supposes that they were guilty of treason. The relationship of prosecutions for espionage or conspiracy to commit espionage to the provisions about treason in the Constitution has never been satisfactorily explained by the Supreme Court.

These questions, and their separate motions on the sentence, were decided adversely to the Rosenbergs by the Court of Appeals. Again, the Supreme Court denied certiorari, and thus refused to decide these matters. The Court of Appeals' decisions on the limits of sentences are, of course, not the decisions about the appropriateness of a sentence which one is likely to have in mind when he speaks about the review and approval of a sentence by a Court of Appeals. The judge who tried the case, Judge Kaufman, is the only judge who has ever made a determination that, given the conviction, and within the limits permitted by law, the sentence imposed upon the Rosenbergs was a just one.

The judge has the final word on the sentence, and the jury has the final word on the facts and the verdict—in this case, the conviction. Both are subject to review by appellate courts on questions of law only, including the law governing the admission of evidence and the law governing the conduct of trials.

All federal convictions of crime are indeed subject to pardon or commutation by the President of the United

States. Even in states, the recommendation of the local prosecuting attorney and trial judge with respect to pardon or commutation is, except on rare occasions, followed by the governor. Quite as inevitably, the recommendation of the local prosecuting attorney and trial judge must be given great weight by a busy Attorney General of the United States, and his recommendation given even greater weight by a still busier President, in disposing of applications for clemency in federal cases.

The responsibility for review is thus primarily that of the appellate courts. In the administration of justice in the federal courts, this means that in the great run of everyday criminal cases the responsibility for review is primarily that of a Federal Court of Appeals. The procedure by which the Supreme Court is authorized to use its discretion in determining whether or not to consider a case decided by a Court of Appeals is a recognition of the fact that the press of controversies from all over this country is so great that the Supreme Court must have power to determine its own load of cases.

The learning, integrity and courage of the judges constituting the Court of Appeals of the Second Federal Circuit gave the observer an expectation that the conduct of the Rosenbergs' trial would be carefully and fearlessly scrutinized on appeal. Moreover, while a verdict of guilty may not be overturned by an appellate court on the ground that its members think they would not have been convinced by the prosecution's witnesses at the trial, the rules of evidence and procedure are such as to enable an appellate court to prevent a plain violation of justice, as the result of a jury's verdict. On the first appeal from the conviction, the Court of Appeals unanimously affirmed the conviction of the Rosenbergs. (Judge Frank dissented from the judgment affirming the conviction of Morton Sobell, the co-defendant

sentenced to thirty years' imprisonment, about whom more will be said as this account proceeds.) The opinion was careful and convincing, though it recognized and clearly pointed out the questionable features of the case against the Rosenbergs.

I at least was satisfied about the conviction. I said so publicly and privately, while publicly and privately I continued to criticize the sentence. I criticized the sentence on the grounds I have already mentioned. I criticized it further on the ground that the opinion of the Court of Appeals itself, while persuasively urging that the evidence justified the verdict, clearly recognized that the case against the Rosenbergs still left their guilt in considerable doubt; more or less serious doubt, depending on the views of the observer.

The record of the trial became generally available to the public as a result of its publication and sale by the Committee to Secure Justice for the Rosenbergs. Study of the record did not seriously shake my confidence in the verdict or in the decision of the Court of Appeals. It made me more acutely aware of the uncertainties about what had been proved. As a result, I was even more disposed to urge that the death sentence should not be carried out since all possibility of correcting errors, which might be discovered later, would be thus removed. But it is the business of a jury to decide about uncertainties. The trial appeared to have been fairly conducted, and the opinion of the Court of Appeals explaining its judgment affirming the conviction still seemed persuasive.

Two of my fellow citizens in Chicago (both strongly anti-Communist) took a different view. Mr. Stephen Love, with a lawyer's mistrust of "accomplice testimony," argued publicly, repeatedly and with great force, that the verdict was, on the record, unjustified, and—in effect—that it

should have been set aside. Dr. Harold Urey, the distinguished scientist, found the case made in the record wholly unconvincing.

We shall return to Mr. Love and Dr. Urey later. For the present, I can only record my own embarrassment. Neither of them convinced me. Dr. Urey, in particular, had his finger on the weakest spots in the case, as evidence available later clearly showed. I should have been convinced by him at the time. The weaknesses in the case subsequently disclosed made Mr. Love's criticisms all the more forceful, and confirmed his opinion about the verdict. But it was possible to doubt his argument at first. I thought that he was too much influenced by the restrictions imposed by statute on the use of accomplice testimony in many states, including New York. The unreliability of confessed accomplices, who may gain lenient treatment by implicating other supposed accomplices in their crimes, is generally recognized; and in the courts of many states convictions cannot be had on the testimony of accomplices alone. No such restrictions are observed in the federal courts; though here as in all states and in England, juries must be warned of the dangers of accomplice testimony. Once the federal rules are accepted, so I said, accomplice testimony is like other testimony. A judge should warn the jury about it, and in this case the District Judge did give some warning. But then, like other testimony, it is for the jurors to believe or disbelieve according to their everyday practical judgments. I continued to feel sufficient confidence in the verdict so that I refused to criticize it.

After the Supreme Court, on November 17, 1952, expressed its final determination not to review the decision of the Court of Appeals affirming the conviction, counsel for the Rosenbergs made their first motion raising new objections to the conduct of the trial, and—in due course—

their two motions based on their view of the legal limits applicable to the sentence. What little I read or heard about these proceedings did not affect my opinion.

My reactions were perhaps typical of those members of the community who thought about the matter at all. I was not disquieted by the verdict, and in this I was surely representative. Like a good many others, whether or not we are representative, I was disquieted by the sentence.

Newly available evidence, which first came to my attention about the middle of May 1953, led me to revise my position.

About a month before, the *National Guardian* had reported the discovery by one of its reporters of a console table said to be the one which had figured briefly but vividly at the trial, in testimony only, as a reward and instrument of espionage given the Rosenbergs by the Russians. The Greenglasses gave the testimony, and prosecuting counsel created the impression that on this point they were corroborated by a part-time maid who had worked at the Rosenbergs' apartment in 1944 and 1945. The theory of the government was that the table was a valuable and handsome one given in payment for espionage, and at the same time specially made for use in microfilming, and thus a means of carrying on espionage. In both ways, it was thought to show the Rosenbergs' participation in espionage.

There were difficulties with the government's view of the testimony; but a serious difficulty for the defendants was their failure to produce the table, or explain why they did not do so. Their counsel did indeed describe the situation briefly (1181);⁸ but he was in a position where all he could do was minimize the matter. The *National Guardian* report

⁸ All page references thus cited within parentheses are to the trial record.

led to the whole story. Mr. Emanuel Bloch, the Rosenbergs' lawyer, had advised with the family in October 1950, some time before the trial, about the closing of his imprisoned clients' apartment and the disposition of their furniture. A little later he was told that, in accordance with his advice, the apartment had been closed, and that the furniture had been sold "for junk." Now, however, in 1953 a sister of Julius Rosenberg said that in 1950 she had saved the console table and a few other things and put them in her basement. She had not been able in 1951 to bring herself to read the accounts of the trial, and might in any event have seen no reference to the table. After the trial, the table was put into the apartment of Julius Rosenberg's mother, who cannot read. A brother of Julius Rosenberg noticed it but did not realize its significance. It was discovered in March of 1953, and reported to Mr. Bloch, who had simply minimized the significance of the episode at the trial and later dismissed it from his mind.

If this was indeed the only console table the Rosenbergs ever had, it confirmed their testimony and disposed of the Greenglasses' testimony. The table found was a plain one.⁴ It bore no traces of ever having had "a portion . . . hollowed

⁴ The appearance of the table seems to me to establish its identity beyond a doubt. On the other hand, its physical condition would have introduced one new problem. We asked Judge Kaufman to look at the table before deciding our motion for a new trial, but he refused to do so; and the Rosenbergs are not alive to give the testimony which they were prepared to give about this problem. The problem results, according to a statement made by Julius Rosenberg for Mr. Bloch, from Julius Rosenberg's amateur attempts to repair the table or tinker with it. The most interesting feature of the resulting condition is the presence of holes in one side of the table. The turning mechanism of the table was broken and the holes were evidently for a support, never completed. No one would describe the holes or anything that could ever have been connected with them simply as "a portion . . . hollowed out." Nor would anyone in Ruth Greenglass's position, at any time when she looked at the table at all closely, have overlooked these holes, or any connected object, if they were then there. The maid's absence of testimony on the subject is also interesting, as is the absence of any testimony on the failure of government officers to see, find, or search for, the table, around the time of

out," as Ruth Greenglass described it, "for a lamp to fit underneath it" for use in microfilming. It was not the \$85 table pictured in a question on cross-examination by the chief of government counsel. Instead, as the Rosenbergs had testified, it was a simple console table of the sort sold at Macy's in 1944 for about \$21 (\$20.36 with sales tax). At the trial, Julius Rosenberg had testified that he had bought the Rosenbergs' only console table at Macy's in 1944 or 1945 for about \$21. The maid was ready now, in 1953, to testify that this newly available table was like the one she had seen in 1944 and 1945, though she had testified at the trial in 1951 that the one she had seen looked like a picture of a table shown her by government counsel.

The discovery of the table apparently disposed of a vivid episode which may well have seized the imagination of the jurors. Logically, as we shall see, the testimony was from the start of dubious quality. It was doubtless good defense strategy not to inflate it by paying too much attention to it, since it was thought that the table had been disposed of, along with the rest of the furniture. But, on discovery of the table, its importance was seen by those concerned with the defense. It was clear that if the identity of the new table could be established by credible witnesses, and the likelihood that any different table had been in the Rosenberg apartment eliminated, it would have a favorable effect on the credibility of the Rosenbergs, and a devastating effect on the credibility of the Greenglasses, who alone had told the story of the Rosenbergs' participation with them in atomic espionage.

Other new evidence was appearing, in curious ways, about the Rosenbergs' arrest. Ideally, the table should have been shown to Ruth Greenglass suddenly, on cross-examination, on a new trial. But we offered to show it to the Court on our motion for a new trial. Judge Kaufman's refusal to look at it has contributed to a defect, which I consider minor, in the record of the case, considered either as history or as a legal phenomenon.

the same time. It looked disturbing. Some of it bore more immediately than the table evidence on the facts of atomic espionage testified to by the Greenglasses, and on the gradual and puzzling growth of the story which they between them told to the FBI. Taken with the new evidence about the table, and the increased doubt of the Greenglasses' reliability which that evidence, if believed, now required, the other evidence further increased the doubt. It led to increased skepticism about the Greenglasses' account of their own atomic espionage activities, and particularly about their story of the Rosenbergs' participation with them in those activities.

An article by P. F. Cavelli, S.J., appearing in *L'Osservatore Romano* on April 16, 1953, reported in part in translation here, urged clemency for the Rosenbergs. The report in the *National Guardian* on April 13, 1953, of the discovery of the console table, came to my attention about the middle of May. On May 16, at the request of the Rosenberg Committee, I made a public comment:

The statement in favor of mercy made on behalf of the Church has reinforced the criticisms made by many Americans, of the severity of the Rosenberg sentence.

Moreover, the report of new evidence must shake the confidence of many who, like me, have been willing to assume that the verdict of "guilty" was fairly reached. The evidence relates to what may be regarded as details of the prosecution's case. Nevertheless, if defense witnesses establish the identity of the newly discovered table, it will cast serious doubt on the credibility of key witnesses for the prosecution and the fairness of the trial as a whole. If the defense is not given a chance to establish the identity of the table, it will be a denial of justice.

This statement was brought to the attention of Mr. Bloch. After some interchange of communications, he asked me on Tuesday, June 2, whether I would join him and Mr.

John Finerty in the defense of the Rosenbergs. I said that if I were entirely satisfied about certain features of the case, I could not refuse. At his invitation, I flew to New York on June 3. After some hours of conversation with Mr. Bloch, and consideration of some of the legal problems in the case, and after sleeping on the matter, I entered the case the following day.

This was Thursday, June 4. At the time, I was convinced only that the Rosenbergs were entitled to a new trial. Thursday was the first day when Mr. Bloch knew, finally, that he could safely use the new evidence which he had; and it was also the last day on which he could safely wait for the appearance of other new items of evidence for which he was hoping. Subject as we were to many interruptions, on Thursday and Friday Mr. Bloch, his one regular lawyer associate and assistant, Miss Gloria Agrin, and I worked on the papers, including the statement of our grounds of motion, supporting our motion for a new trial and a closely related motion in the nature of habeas corpus. In accordance with our agreement, we served the papers on a junior lawyer for the prosecution, at his house, at about two o'clock in the morning of Saturday, June 6.

We argued the motions Monday afternoon, June 8, in the District Court, where Judge Kaufman at once denied them. On Tuesday afternoon, June 9, we appeared to argue for a stay in the Court of Appeals, for time for briefing and deliberate preparation for our appeal from Judge Kaufman's decision. We were directed instead to argue our appeal, and—subject to our protest—we did so. We heard the Court of Appeals' unfavorable decision late Thursday afternoon, June 11.

We went to Washington on Friday, June 12. We had a courteous hearing by Mr. Justice Jackson on Saturday morning, June 13. Our motion now was for a stay pending time

to put into the required form three petitions for certiorari to review three adverse decisions, two on the two motions about the sentence, and one on our most recent motions based on the newly available evidence. To this we added a motion for reconsideration of the Supreme Court's recent decision denying certiorari to review an adverse decision on the first post-trial motion, the one which raised the first new objections to the conduct of the trial.

We were told in the course of Saturday afternoon that the Court in its afternoon conference had refused to agree to Mr. Justice Jackson's recommendation that it hear us in oral argument on our motions at its final scheduled meeting for the year on Monday. We inferred—correctly—that our motions were to be denied. They were formally denied on Monday, June 15, with Justices Black, Douglas, Frankfurter, and Jackson dissenting from the decision on the stay.

After a week in the courts, during which I had gradually come to believe the Rosenbergs innocent, we had lost our motion for a new trial. I was convinced of its merits and, in view of some early experience with motions in commercial cases in Wall Street, I was very much surprised at the speed with which prosecutors and courts alike had disposed of the matter.

Members of the Supreme Court, and finally the Court itself, devoted the next days to further consideration of the case, and, in the end, simply to questions about the possible application of the Atomic Energy Act to limit the sentence. Early in the afternoon of Friday, June 19, the Court announced that it had resolved these questions, by a 6 to 3 vote, against the Rosenbergs. A little later it denied two final motions. An application for clemency was then first formally before the President. He denied the application, and the Rosenbergs were executed in the early evening.

The events have general significance. As one studies the case, it appears to be an example of problems which threatened to become increasingly acute in the administration of justice in the cold war. It reflects tensions between sections of the New York community, and of the American community as a whole, quite apart from the tensions between Communist and anti-Communist. It raises, in dramatic form, persistent questions about the operation of our system of criminal law and its judicial administration.

On two occasions, people of unusual intelligence, in response to my expressions of doubt of the Rosenbergs' guilt, answered: "Why, they were Communists, weren't they?" While the Rosenbergs claimed their privilege of declining to testify about Party membership, Julius Rosenberg testified clearly and simply to his interest in and respect for the achievements of Soviet Russia. Let us assume that they were, in one of the various senses of the word, "Communists." It is remarkable that capable people should ever have taken it for granted that Communism was a sufficient basis for conviction of espionage and for a death penalty.

The definition of Communism, moreover, shows considerable capacity for expansion. A once famous example was the understanding of "Communism" which led a well-known figure to say that we must investigate the "Communism" prevalent among Protestant clergymen. The *Wall Street Journal* has observed editorially that it might itself well be vulnerable to the tests in the Communist Control Act of 1954.

Putting these two sets of ideas together, we find that we had before us a new and compelling question of policy and law. The question was whether we were to return to some features of the Inquisition, and punish a somewhat vaguely defined set of heresies, not simply by loss of occupation and boycott, but at times also by death.

The Rosenberg case is significant as a human occurrence, as a social phenomenon, and as a puzzle in proof. Unless a member of the general public has some acquaintance with the problem of proof in the case, he cannot fully appreciate its other aspects. We turn then to the story and the evidence.

2

The Case—Conspiracy to Commit Atomic Espionage

THE first acts of atomic espionage described by the Greenglasses are said to have occurred in November and December 1944. About the middle of November, Ruth Greenglass in New York was planning to visit her husband, ultimately a technical sergeant, working as a machinist at the Los Alamos laboratories of the Manhattan Project. She testified that she then had a conversation with the Rosenbergs which, at the trial in March 1951, she described as follows:

Julius said that I might have noticed that for some time he and Ethel had not been actively pursuing any Communist Party activities, that they didn't buy the Daily Worker at the usual newsstand; that for two years he had been trying to get in touch with people who would assist him to be able to help the Russian people more directly other than just his membership in the Communist Party, and he went on to tell me that he knew that David was working on the atomic bomb and I asked him how he knew. . . . He said that his friends had told him that David was working on the atomic bomb, and he went on to tell me that the atomic bomb was the most destructive weapon used so far, that it had dangerous radiation effects, that the United States and Britain were working on this project jointly and that he felt that the information should be shared with Russia, who was our ally at the time, because if all nations

had the information then one nation couldn't use the bomb as a threat against another. He said that he wanted me to tell my husband David that he should give information to Julius to be passed on to the Russians. And at first I objected to this. I didn't think it was right. I said that the people who are in charge of the work on the bomb were in a better position to know whether the information should be shared or not.

Ethel Rosenberg said that I should at least tell it to David, that she felt that this was right for David, that he would want it, that I should give him the message and let him decide for himself . . .

I decided to give my husband the message, and Julius Rosenberg told me the things that he wanted me to ask my husband, the information that he wanted me to bring back (679-680).

Mr. James B. Kilsheimer III was conducting the direct examination of Ruth Greenglass. He was junior to Mr. Roy Cohn, later counsel for the McCarthy Committee, and Mr. Irving Saypol, now a Justice of the Supreme Court of New York, the other two prosecutors active in the trial of the Rosenbergs. (Mr. Myles J. Lane played a minor part in the trial.) Mr. Kilsheimer asked Ruth Greenglass:

Q. And what information did he [Julius Rosenberg] ask you to obtain from your husband if he should be willing to do it?

A. He wanted a physical description of the project at Los Alamos, the approximate number of people employed, the names of some of the scientists who were working there—something about whether the place was camouflaged, what the security measures were and the relative distance of the project to Albuquerque and Santa Fe. Oh—and he told me—I am sorry—he told me also to tell David to be very circumspect not to indulge in any political conversation and to be very careful not to take any papers or sketches or blueprints, not to be obvious in seeking information, to relate to me only what he retained in his memory (680).

David Greenglass, under direct questioning by Mr. Cohn, had already given an account, in different words, of the re-

port which his wife gave him in Albuquerque of the same conversation (423-425).

Mr. Emanuel Bloch's father, Mr. Alexander Bloch, was at that time the only other lawyer associated in the defense of the Rosenbergs. Mr. Alexander Bloch conducted part of the cross-examination of Ruth Greenglass. She had given in the morning the testimony which has been quoted, and the cross-examination took place in the afternoon of the same day. Among other questions and answers in the course of the cross-examination are the following:

Q. . . . Now will you kindly tell us again what was said at that conference. . . . [The alleged conversation between Julius and Ethel Rosenberg and Ruth Greenglass in November 1944]

A. Yes. Julius said that I might have noticed that he and Ethel had not been openly participating in any Communist Party activities: that they hadn't been buying the Daily Worker at their usual stand. He told me that David was working on the atomic bomb; that the atomic bomb had dangerous radiation effects; that it was the most destructive weapon used to date; that Britain was working with the United States on this project; that the information had not been shared with the Soviet Union; that he felt that for scientific purposes it should be shared with the Soviet Union, so that one nation couldn't use the weapon as a threat against another; and he told me the type of information he wanted me to get from David; that David would consent to pass it on—do you want that, too?

Q. Give us the whole conversation.

A. All right. He said that he wanted a physical description of the project at Los Alamos and the approximate number of people working there; who the prominent scientists were; how the place was camouflaged; what the security measures taken were; what David's work in particular was and the distance of the project from Santa Fe and Albuquerque.

Q. Now let me ask you; Did you at any time before you took the stand today read any part of what you just now told us in any paper or any document?

A. I read it in the statement that I signed for the federal authorities, when I signed it.

Q. And you memorized it?

A. I never memorized it. I knew it too well.

Q. Well, are you aware of the fact that the narrative you just gave us is almost identical with the verbiage used on your first giving of the testimony of that particular occurrence?

A. No, I am not.

MR. SAYPOL. Just a moment. I appreciate so expert an opinion as to the accuracy of the witness's recollection, but I object to the form of the question.

THE COURT [JUDGE IRVING R. KAUFMAN]. Your objection is sustained. I don't know exactly what the point is. If the witness had left out something, Mr. Bloch would say that the witness didn't repeat the story accurately. And the witness repeats it accurately, and apparently that isn't any good.

MR. A. BLOCH. What I am referring to is the verbatim repetition of the verbiage.

THE COURT. Well, we don't know that it is verbatim. We haven't had the record yet.

MR. A. BLOCH. Well, it is a matter, of course, of comparing the testimony after we get it written up.

THE COURT. Mr. Bloch asked the question; the witness has answered.

MR. BLOCH. Very well (727-728).

Ruth Greenglass, continuing the testimony given on her direct examination with an account of her trip to New Mexico, testified that Julius Rosenberg gave her \$150 toward her traveling expenses. This Julius Rosenberg later denied (1065), as he and his wife denied every feature of the testimony that they participated in this or any other act of espionage.

David Greenglass told about their conversations on the subject of espionage during the five-day furlough which he had during his wife's visit to him, beginning November 28

or 29 (their second wedding anniversary), 1944. They spent their time in Albuquerque.

During the latter part of the furlough, they went for a walk out past the city toward the Rio Grande. Here, according to David Greenglass, his wife told him about her conversation with the Rosenbergs in New York. He told his wife he "wouldn't do it." Then he thought more about it that night. The next morning he told his wife he would give the information.

Between them, David and Ruth Greenglass testified that he gave her information which might indeed have been useful to the Russians, and that she memorized it. David Greenglass, according to their testimony, told his wife the location and physical characteristics of the project at Los Alamos, the number employed there, something about his work (683) (but nothing so far as appears about its significant features), and the real names of four scientists working or visiting there under assumed names. These names were apparently the most valuable items of information which he then gave, for they would indicate to a Russian scientist the kind of work that was being done at Los Alamos. The names were: Neils Bohr, "Kistiakowski" (George B. Kistiakowsky), J. Robert Oppenheimer, and—according to Ruth Greenglass—Harold C. Urey.

Ruth Greenglass testified that on her return to New York during the first week in December 1944, Julius Rosenberg came to her house. She gave him the information orally. He was "very pleased," and at his request she wrote it down for him.

The most elaborate of the three episodes of atomic espionage described by the Greenglasses is said to have begun about a month later, when David Greenglass was

home on furlough. He arrived January 1, 1945, with about three weeks free, including travel time.

David Greenglass testified that a few days after he reached New York, Julius Rosenberg called on him in the morning at the Greenglasses' home, and asked him for more information. David Greenglass had told his wife about the nature of his work, and he now had some talk with Julius Rosenberg about the experiments with detonating devices, the lens molds and lenses, on which he was particularly employed. Julius Rosenberg asked him for lens mold sketches, with descriptive material, a list of people who might give information for the Russians, and another list of scientists. Julius Rosenberg gave David Greenglass "a description of the atom bomb." In accordance with their arrangement, David Greenglass made the sketches, wrote the descriptive material, and prepared the list of possible informants and the new list of scientists (largely duplicating the old, it appears), and Julius Rosenberg picked them up the following morning.

Ruth Greenglass corroborated her husband's testimony about the calls and conversation in question, except that she said she could not understand the technical matters discussed in the conversation. She testified that in response to her comment on David Greenglass's poor writing, Julius Rosenberg told her that Ethel Rosenberg would type the descriptive material. She also testified that Ethel Rosenberg later said she had no difficulty with the writing.

During the trial, David Greenglass made a sketch purporting to reproduce "the sketch" of the lens mold which he alleged he had given Julius Rosenberg over six years before. He testified that he made it entirely from memory (609). It was introduced in evidence, and admitted for the purpose of clarifying his testimony.

According to the Greenglass testimony, when Julius

Rosenberg picked up the "sketches" and accompanying material at David Greenglass's home, he asked the Greenglasses to come to dinner at the Rosenbergs' home a few evenings later. They came to dinner, and here, allegedly, the next acts in the lens mold episode took place. These were preparations, particularly those for identification by means of a cut Jello box, to give further information about the lens mold to a visitor who might be expected in Albuquerque during the following weeks or months.

Ann Sidorovich, whom all but David Greenglass knew (and he knew her husband), was there for a short time in the late afternoon or early evening. (She was on the government's list of their witnesses to be called, though she was not called; and this sufficiently explains the defendants' unwillingness to call her as their witness.) She left, apparently before dinner, and then Julius Rosenberg is reported to have said that he had wanted her there so that she could be recognized if she went West to get more information about the bomb. His tentative plan was for her to meet Ruth Greenglass—who already knew her—in a movie theater in Denver, where they could exchange purses. David Greenglass's new information would be in his wife's purse, and Ann Sidorovich would take it out with her.

After Ann Sidorovich's departure, and the explanation of her possible part in espionage, and after dinner, two other events occurred. The testimony of David and Ruth Greenglass about the sequence of these events is not clear or consistent, but nothing of importance appears to depend on the sequence.

For one thing, the plan for the meeting in the Denver theater appears to have been discussed, and difficulties raised about it; and at the same time it was recognized that Ann Sidorovich might be unable to act in her proposed capacity of intermediary. An alternative and evidently a

preferred plan was proposed. The meeting with some intermediary was to be before a particular Safeway store in Albuquerque.

In the second place, while David Greenglass stayed in the living room, his wife and the Rosenbergs went into the kitchen and Julius Rosenberg cut the "instructions" side of a Jello box in two. The Rosenbergs and Ruth Greenglass came back into the living room.

Ruth Greenglass testified as follows to the ensuing conversation:

I showed David the half of the Jello box and I told him that Julius had given this to me to identify me to the other party who was going to come to get the information. . . .

David said it was very clever; and Julius said, "The simplest things are always clever" (690).

Ruth Greenglass testified that by the end of the evening it was settled that someone was to meet her to collect the new information, at an unspecified date, in front of the Safeway store in Albuquerque. She was to go to live in Albuquerque, and Julius Rosenberg assured her of financial support. According to her testimony, he also seems to have indicated that she need not repay the \$150 which she said he had provided for her earlier trip to Albuquerque.

David Greenglass, while he testified at various points that his wife was to have their half of the Jello box side, also testified at one point that he himself was to have it. He testified that, when he last saw their half in New York, his wife had it.

Their testimony is that she, in fact, had it when she came out to settle in Albuquerque about the first of March, some two months later. She said that she had kept it in her "wallet."

Ruth Greenglass testified that in early February Julius

Rosenberg came to her home and arranged for a meeting with an intermediary the "last week" (or Saturday) in April or the "first week" (or Saturday) in May before the Safeway store (693-695). Nothing is said about the procedure to be followed in this somewhat public place. Ruth Greenglass's younger sister, then sixteen, Dorothy Printz (at the trial, Dorothy Abel), confirmed her testimony that on his visit in February Julius Rosenberg asked Dorothy Printz to take a book into the bathroom, out of hearing, and close the door (787-789). They both testified that Dorothy Printz did so. Ruth Greenglass testified that, in Dorothy Printz's absence, she and Julius Rosenberg made the arrangements for the meeting in Albuquerque. Julius Rosenberg confirmed the fact of the visit and the events described by Dorothy Printz. He denied the conversation recounted by Ruth Greenglass. He said that on his entry Ruth Greenglass whispered: "I would like to talk to you alone. Tell the kid to go into the bathroom." When Dorothy Printz had gone, Ruth Greenglass, according to Julius Rosenberg, told him that she was worried because David Greenglass had some idea that he might make money and "take some things from the Army." Julius Rosenberg testified that he told Ruth Greenglass to "make sure to tell him that he doesn't do anything of the sort" (1087-1090). (The testimony about the taking is considered further in Chapter 5.)

Ruth Greenglass testified that her illness frustrated the plans for the meeting in Albuquerque which she and Julius Rosenberg had made. She testified that she wrote Ethel Rosenberg about her illness, and that Ethel Rosenberg replied, in a letter which had been lost, "that a member of the family would come out to visit me the last weeks in May, the third and fourth Saturday." She accordingly waited at the Safeway store the third and fourth Saturday afternoons in May, presumably with papers for the intermediary,

with the Jello box side in her wallet and her husband with her the second time—so far as appears in full view of shoppers; but no intermediary came to meet her (695-698).

When the intermediary finally appeared in June, the Greenglasses' half of the Jello box side was still in Ruth Greenglass's "wallet," but it was David Greenglass who—as we shall see—used it for identification.

The prosecution cut a Jello box side to conform to the testimony of the Greenglasses, for the purpose of showing the jury how the plan was worked out.

It must be remembered that the Rosenbergs denied the truth of all the testimony about the Jello box episode, as they denied any participation whatever in any of the other acts relating to the lens mold episode, or any other of the alleged acts of conspiracy to commit espionage.

An earlier event connected with the lens mold episode is said to have taken place in New York before the use of the Jello box for identification.

During the evening in January at the Rosenbergs' home, according to David Greenglass's testimony, Julius Rosenberg told him that he wanted him to meet "a Russian." David Greenglass testified at the trial that a few nights later, after Julius Rosenberg had made an appointment, in accordance with their arrangement David Greenglass drove in his father's car to some point on First Avenue, "between 42nd and 59th Streets," where he parked. Julius Rosenberg saw him, went away, and brought back a "man," whom he introduced by a now forgotten first name. David Greenglass and the man drove "all over that area" while the man asked questions. They drove for "about twenty minutes or so." Then they returned to the point of the original meeting, where Julius Rosenberg was waiting. "The Russian got out" and went away with Julius Rosenberg. David Greenglass drove home.

David Greenglass's account of the questioning during the drive is as follows (453):

... He just told me to keep driving and he asked questions about lenses.

Q. [by Mr. Cohn, conducting his direct examination]. Did he ask you specifically about this high explosive lens? [The lens is not further identified here; it was, in context, the one of which David Greenglass allegedly had given Julius Rosenberg a "sketch," or perhaps with variations, "sketches," a few days before.]

A. He did. He asked about high explosive lenses and he wanted to know pertinent information, type of H.E. [high explosive] used. . . .

He wanted to know the formula of the curve on the lens; he wanted to know the H.E. used, and means of detonation; . . . and I drove around, and being very busy with my driving, I didn't pay too much attention to what he was saying, but the things he wanted to know, I had no direct knowledge of and I couldn't give a positive answer.

There is no inconsistency between David Greenglass's testimony that he gave Julius Rosenberg sketches of a lens mold and his testimony here. The reproduction he made during the trial of the sketch which he said he had given to Julius Rosenberg omitted the dimensions of the lens mold. So did the sketch of another lens mold which he claimed to have given six months later to the expected intermediary at Albuquerque. They could have been useful, as Dr. Koski, the physical chemist in charge of the work, testified at the trial, in illustrating the principle of the lens mold, and so of the lens. The lens molds were used in making a great variety, successively, of different forms of lenses. The objective, successfully attained, was to develop a lens device which would concentrate the effects of an explosive charge, in an "implosion," and so detonate a bomb. It was the general principle of the lens that David Greenglass's sketches indicated.

The climax of the lens mold episode is said to have occurred on Sunday, June 3, 1945. (David Greenglass's testimony that it was the third Sunday in June is evidently a slip.) On that day, in the morning, after failing to find them at home the evening before and, so far as appears, without any arrangement about the time, the expected intermediary is said to have come to the Greenglasses' apartment in Albuquerque. He was Harry Gold. His own testimony (under examination by Mr. Lane) and that of the Greenglasses give the only information we have that the visit took place, and the only accounts we have of what occurred (455-466, 699-702, 821-829).

All three testified at the trial that Gold knocked at the door of the Greenglasses' apartment, and David Greenglass opened it. David Greenglass and Gold testified that Gold asked if this was Mr. Greenglass, and David Greenglass said that it was. David Greenglass, Ruth Greenglass, and Gold testified, respectively, that Gold gave a similar greeting in slightly varying forms: "Julius sent me"; "he said he bore greetings from Julius"; "I came from Julius."

Gold testified that he had received from his superior, Yakovlev, a piece of onionskin paper, which he was to destroy after memorizing what was on it: the Greenglass address, and the words: "Recognition signal. I come from Julius." Gold testified that he also received from Yakovlev a half of a Jello box side, which he described as one corresponding to the half opposite to that which Ruth Greenglass had kept.

Gold and Ruth Greenglass both testified that Gold first showed his part of the Jello box, and that David Greenglass then went "to a woman's handbag," "to my wallet," and got the Greenglasses' part, and matched it with Gold's. David Greenglass's testimony seems to imply that he got the Greenglasses' part first from his wife's wallet, that Gold

then produced his part, and that they then matched them. It is said that this latter sequence would not conform to espionage practice. David Greenglass's report of the sequence is, however, ambiguous; it is corrected by both Ruth Greenglass and Gold, and nothing important seems to turn on it.

From here on the three accounts of the events of the day are general and substantially in agreement. Gold came after breakfast, according to his testimony about 8:30. He stayed about ten or fifteen minutes. He learned that David Greenglass didn't have anything ready for him, and would have to write his information up. As he and David Greenglass both testified, he cut David Greenglass short on suggestions for enlisting new participants in the conspiracy. According to his testimony, he gave David Greenglass an envelope containing \$500, given him by Yakovlev for this purpose. Gold left David Greenglass to write up his information. He testified, "... just as I was preparing to go, Mrs. Greenglass told me that just before she had left New York City to come to Albuquerque she had spoken with Julius ..."

David Greenglass prepared his material for Gold. It included "some sketches of a lens mold and how they are set up in an experiment," "descriptive material that gives a description of this experiment," and "a list of possible recruits for espionage." It included also what information David Greenglass had about the test explosion which was to take place about a month later at Alamogordo, New Mexico (520).

Gold returned about three in the afternoon and got the material, in an envelope. According to the Greenglasses, more circumstantial than he on the point, he then gave David Greenglass the envelope containing money. Gold testified: "Mr. Greenglass told me that he expected to get a furlough sometime around Christmas, and that he would

return to New York at that time. He told me that if I wished to get in touch with him then I could do so by calling his brother-in-law Julius, and he gave me the telephone number of Julius in New York City."

The Greenglasses then walked with Gold to the USO. He parted from them, and they went in for a time.

The prosecution introduced a sketch of a lens mold, a step beyond that illustrated by the sketches previously given Julius Rosenberg, identified by David Greenglass as a replica of the sketch of a lens mold given Gold in June 1945. He had prepared it, according to his testimony, at the time of his arrest, June 15, 1950. The prosecution also introduced a sketch which David Greenglass testified he had prepared just the day before, as a replica of the sketch of a lens mold experiment which he gave Gold in June 1945. In each case David Greenglass testified that he prepared the sketch entirely from memory.

Gold's testimony was illuminating on two matters not immediately connected with the lens mold episode.

In the first place, his account of his relations with Yakovlev indicates that extreme care was used in avoiding surveillance; and his instructions to David Greenglass about possible informants show that corresponding care was used in considering approaches to any possible new source of information.

In the second place, Gold's testimony indicates, what is well known anyway, the paramount importance attached to the disclosures made by Fuchs. Yakovlev first directed Gold to see David Greenglass on Gold's return from meeting Fuchs in Santa Fe. Gold protested that the success of a major mission should not be imperiled for the sake of a minor one. But Yakovlev insisted, and his orders were followed. Yakovlev later told Gold, according to Gold's testi-

mony, that the material about the lens mold which David Greenglass had given Gold was "extremely excellent and very valuable."

David Greenglass worked specially on the lens mold project. No interest in any information from him about any other feature of the work at Los Alamos comparable to the interest in the lens mold shown by Gold and Yakovlev appears to have been taken by any other espionage agent of anything like their experience and standing. David Greenglass was a specialist on the lens molds as seen by a machinist. Fuchs, with whom Gold testifies he was in touch as late as September 19, 1945, was capable of supplying general information about the bomb, together with information about the mathematics, physics, and chemistry of atomic energy far beyond Greenglass's comprehension. Fuchs's confession has been kept secret in England. Nevertheless there appears to be a general opinion among atomic scientists that he passed on all the information needed about the work done on the general characteristics of the bomb up until the fall of 1945, together with highly difficult technical and specialized information which he among the atomic spies working in the United States was best qualified and best placed to acquire and transmit.

The third episode of supposed atomic espionage, as to which David Greenglass is the principal, in effect the only witness, is the episode of the "cross section of the bomb" (489 ff.).

David Greenglass testified that on his furlough in January 1945, Julius Rosenberg gave him "a description" of the atom bomb, a bomb of the type which was to be used at Hiroshima. The description was given in order to enable David Greenglass to know what to look for. During the next months David Greenglass gathered new information not

only about the lenses, on which he was employed, but also about other features of the bomb. As a result when he and his wife were in New York on furlough in September 1945, living at his mother's apartment, he gave Julius Rosenberg a sketch of a more advanced bomb, together with descriptive material. He testified that Julius Rosenberg gave him \$200 for the sketch and material. He also testified that Ethel Rosenberg edited and typed his descriptive material. As in the case of other alleged episodes of espionage, the Rosenbergs denied every feature of his, and his wife's, testimony tending to connect them with espionage.

David Greenglass testified that he gathered information about general features of the bomb in the following way.

Q. [by Mr. Cohn]. After he [Julius Rosenberg] gave you that description, the Hiroshima type, did you, in ensuing months, gather information concerning the atom bomb?

A. I did.

Q. Will you tell us just how you went about that?

A. I would usually have access to other points in the project and also I was friendly with a number of people in various parts of the project and whenever a conversation would take place on something I didn't know about I would listen very avidly and question . . .

. . . the speakers as to clarify what they had said. I would do this surreptitiously so that they wouldn't . . .

I would do it so they wouldn't know . . .

Q. Now in addition to that fact, you yourself were working on various things used in connection with the experimentation used on the atom bomb?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. Such as this high explosive lens?

A. High explosive lens molds were made in my shop and I got—as a matter of fact, there were molds used on the atom bomb (494-495).

This is the only account which the prosecution got from David Greenglass of the means by which he got information about any other feature, apart from the lenses, of the atom bomb.

On cross-examination David Greenglass gave two examples of the activities described more generally on his direct examination. In one case he simply "came into a room" and talked with a scientist and a non-scientist there about a machined piece of material, which they said was "neutron source." In another case a scientist brought him material for machining; he went "over to his place" (the scientist's place), and got him into conversation. "I would say, 'what is the idea?' He would tell me the idea." (See 623-628.)

As a result of these inquiries, David Greenglass, according to his testimony, was able to say, when Julius Rosenberg called on him one morning during his furlough in September 1945, "I think I have a pretty good description of the atom bomb." David Greenglass testified that in the course of the ensuing conversation Julius Rosenberg gave him the \$200. Julius Rosenberg asked him to get his material ready at once, and left.

David and Ruth Greenglass then had a "combination breakfast and lunch." Ruth Greenglass made some objection to giving further information, but her husband was determined to go ahead. After their meal, David Greenglass prepared some sketches and about twelve pages of writing, including descriptive material to explain the sketches, "some scientists' names," and "some possible recruits for espionage." About two o'clock in the afternoon or later David and Ruth Greenglass drove in her father's car to the Rosenbergs'. Here David Greenglass gave Julius Rosenberg the sketches and writing. They joined in editing the descriptive material for grammar, and Ethel Rosenberg typed it. Ruth Greenglass corroborated the outlines of her husband's testimony about the part of the episode that took place in

New York, except that she was unable to say anything about the contents of the papers that he gave to the Rosenbergs.

David Greenglass was arrested on June 15, 1950. No reference to the episode of the cross section of the atom bomb, "the atom bomb itself" in Mr. Cohn's words, appears to have been made in the proceedings until the second week of the trial, the afternoon of Monday, March 12, 1951. There is no reference to the episode in any of the indictments. The prosecution, as is required in a capital case, listed the witnesses it expected to call. It named a number of prominent scientists, including Professor J. R. Oppenheimer and Professor Harold C. Urey. It actually called only Dr. Walter S. Koski among the scientists; there is no indication that any representative of the government talked with any other of the scientists about the case; and no representative of the government did in fact ever talk with Professor Urey about the case in advance of the trial. Though the government's list may well have created the impression that it had the dominant scientists in the country on its side, if the indictments had mentioned the cross section of the bomb the defense would have been given notice, at any rate, that a line of proof was to be presented which would require the presence of any qualified scientist it could find.

On the afternoon of March 12, 1951, David Greenglass gave his testimony, presenting for the first time the account of the cross-section episode which has already been given. Again, the government introduced a sketch as a reproduction of the original sketch supposedly given to Julius Rosenberg in September 1945. David Greenglass testified that the sketch was "a replica of the sketch, cross-section of the atomic bomb" with "Maybe a little difference in size; that is all," but otherwise like the sketch he gave to Julius Rosenberg in September 1945. Some of the descriptive material was apparently reproduced to go with the sketch. David

Greenglass gave no further testimony about the new sketch, or the time when or the circumstances in which it was made. (Cf. 611, the court's first question, which seems, however, to refer to the other sketches; see 609.)

At this point, Mr. Emanuel Bloch moved that the sketch be impounded "so that it remains secret to the Court, the jury and counsel." His motion led to a colloquy with representatives of the Atomic Energy Commission and the Joint Congressional Committee on Atomic Energy, present in court; and to a discussion at the bench, in which substantial agreement was reached. While the press was finally admitted, the other spectators were required to leave the courtroom. Under the same conditions later in the trial, a qualified witness, Mr. John A. Derry, an engineer, who had been associated with the original Manhattan Project and was still with the Atomic Energy Commission, was shown the sketch and questioned about it. He testified that the sketch did "concern" or was "the bomb we dropped at Nagasaki, similar to it"; that from it a scientist, or the witness himself, could "perceive what the actual construction of the bomb was . . . To a substantial degree"; and that it did "demonstrate substantially and with substantial accuracy the principle involved in the operation of the 1945 atomic bomb."

The only senior scientist who has publicly criticized the conviction, Dr. Harold Urey, considers it possible that under the conditions at Los Alamos in 1945 a man in David Greenglass's position could have gotten access to the kind of information which Dr. Urey supposes that the sketch reproduces. He also considers it possible that a machinist with David Greenglass's training and experience could assimilate and transmit this kind of information, and that it would have been valuable to foreign scientists or engineers working on the problem of the atomic bomb. He apparently

assumes that the information must relate to the housing of the Nagasaki bomb. He considers it clear that a man of David Greenglass's training and experience could not acquire, assimilate, or transmit the mathematics, physics, and chemistry which made the atomic bomb a novelty in the history of weapons. It is the mathematics, physics, and chemistry, in significant quantities, which Fuchs was qualified to transmit and is thought to have transmitted, quite possibly along with the mechanical features of the housings as well. Dr. Urey has expressed no opinion about David Greenglass's capacity to reproduce such a sketch as he may be supposed to have given Julius Rosenberg in September 1945, some six years later, from memory. Dr. Urey has also expressed no opinion whether David Greenglass's testimony shows that he in fact got the access, which was possible in 1945 at Los Alamos, to the kind of information that would have enabled him to make such a sketch as he may be supposed to have given Julius Rosenberg in September 1945.

While impressions about the precise character of the information to which David Greenglass's testimony refers may have influenced the sentence, and perhaps—however illogically—the verdict as well, they are certainly not logically relevant to the issue of guilt.

The strong portion of the government's case has been sketched, it is hoped fairly, in this chapter. The jury could have believed the testimony thus far outlined, and the conviction is to that extent justified, whatever one may think about the sentence.

If the prosecutors had limited themselves to the testimony so far described, they would perhaps have made a stronger case for history, if not for the jury. We shall turn shortly to more questionable lines of evidence.

In the meantime, however, one or two preliminary remarks about the evidence here described may be in order.

The testimony with respect to the lens mold episode is the most persuasive of any of the three lines of testimony thus far outlined.

Our impression of the first episode, the transmission of names of scientists engaged and other information about the Los Alamos project, must be affected by indications that Ruth Greenglass had memorized a considerable number of phrases. The phrases were in each case so vivid and detailed as to add, at first hearing, to the verisimilitude and the convincing quality of her testimony. True testimony may of course be memorized. For an inexperienced witness, some memorizing and coaching may indeed be indispensable. But on the whole, memorized testimony is apt to be less convincing than spontaneous testimony.

The silence of the record over a period of about nine months, from David Greenglass's arrest through the time of the grand jury proceedings and the successive indictments until the day of his testimony on the subject, is bound to raise some doubts about his testimony as to "the cross-section sketch of the atom bomb." During this period David Greenglass was in custody. Zealous FBI agents and prosecuting officials were doubtless pressing him to give as much information as possible. However it was done, there was some means by which the government could enable David Greenglass, Ruth Greenglass, and Gold—also in federal custody—to organize accounts of events which would correlate with each other. The importance attached to this episode at the time of the trial suggests that David Greenglass might have held it back because it was especially incriminating for him. On this view, it is unlikely that he would have produced it until such a time as he was given convincing assurance of lenient treatment. But it is quite as likely that he was aware that, on any view, the sketch of the cross section of the bomb would

seem to informed people less important, in the state of espionage in 1945, than the information about the lens mold.

The testimony about the first and third episodes, apart from access and memory difficulties about the third episode, is much simpler than the testimony about the four subepisodes of the lens mold episode. Moreover, only David and Ruth Greenglass testified to the occurrence of the first and third episodes, whereas Gold as well as the Greenglasses testified to the occurrence of the fourth subepisode in the lens mold series. Gold is, indeed, by his own testimony, another accomplice and his testimony would not of itself be enough even to make the Greenglasses' testimony admissible under the strict rules excluding uncorroborated accomplice testimony in the courts of the state of New York. He had been sentenced at the time when he testified and the temptations of hope for immunity or a light sentence which must have existed for the Greenglasses could not affect him. Yet he must have looked forward to his eventual application for parole, and it seems not unlikely that there are some advantages for the cooperative anti-Communist witness in prison life comparable to those which exist in the community outside prisons. On balance, it seems reasonable to say that his testimony adds something to the account of the final climactic transfer of lens mold information at Albuquerque on that first Sunday in June of 1945.

If we think, as the jury may have done, that Gold was telling the truth, his references to "Julius" are interesting. One of them is simply a reference to Ruth Greenglass's supposed remark to him "that just before she had left New York City to come to Albuquerque she had spoken with Julius." Another is a reference to something David Greenglass said after Gold's return in the afternoon. "He

told me that if I wished to get in touch with him I could do so by calling his brother-in-law Julius, and he gave me the telephone number of Julius in New York City."

In the absence of further testimony by Gold tending to connect the Rosenbergs with atomic espionage, we may find these references of limited significance. His third item of testimony about "Julius" seems at first more persuasive on the issue of the Rosenbergs' guilt. He testified that Yakovlev had given him a piece of onionskin paper, on which were typed "Greenglass," an Albuquerque address, and the words: "Recognition signal. I come from Julius." As we have seen, the Greenglasses and Gold all testified to the use of some such phrase by Gold immediately after he asked whether this was Greenglass, and received an affirmative answer, at the beginning of his morning call on them in Albuquerque. If he was telling the truth, the use of the name "Julius" in the "recognition signal" is the kind of coincidence which may play a considerable part in circumstantial proof. A simple coincidence, or more commonly an accumulation of coincidences, may seem so unlikely an accident that it may be taken to call for an explanation by something other than accident. The strength of evidence of this sort will depend in each case on the observer's generalization, drawn from his everyday experience of life or sometimes from his special knowledge.

Whatever the significance of the naming might otherwise be, its consideration leads us at once to a particular difficulty in believing Gold's testimony. If the recognition signal refers to Julius Rosenberg (or to Klaus Emil Julius Fuchs) it is inconsistent with a principle of espionage which Gold clearly stated at another point in his testimony. This is the principle that any individual engaged in espionage should know as few names as possible of others engaged with him, in order to avoid the possibility of slips in con-

versation and to decrease the scope of possible testimony in case of legal proceedings. The application of the principle was limited, for reasons which can be inferred, in Gold's relations with Fuchs and Greenglass; but no reason suggests itself why Gold should be told, or should know, either name of Julius Rosenberg. Indeed the recognition signal, though it may have been a sensible precaution, seems in the story an unnecessary duplication. The Jello box part was described as an adequate recognition device. Apart from the recognition signal and the reported remarks, one by Ruth Greenglass and the other by David Greenglass, Gold's testimony gives no other indication that he knew, or ever heard of, either of the Rosenbergs.

The Greenglasses' testimony about the lens mold episode is by itself the most convincing sequence of testimony which they gave. There are some difficulties with it as the trial record stands, and these will be referred to later in connection with the significance of the evidence offered on the motion for a new trial. As it stands on the trial record, it reads like the sort of story a jury might well believe. It is not very complex, nor does it depend on any very striking correlation between the stories of the two witnesses (or between their stories and that of Gold). But on the whole their stories do seem consistent with each other, and they do have a degree of complexity. In some circumstances, at any rate, a degree of complexity is some assurance, though often by no means conclusive assurance, of truth. It is generally harder to make a consistent complex fabrication than to tell a complex truth.

Here, however, a special difficulty with accomplice testimony, applicable to both Gold and the Greenglasses, needs to be remembered. Zealous police officials and prosecutors may, whether or not on purpose, derive help in expanding their investigations from the hope which accomplices may

have of the familiar advantage of giving "state's evidence." In addition, an accomplice, if he has himself participated in criminal activities of any complexity, will have an impressive story with which to start. If he wishes, for any reason, to add someone to the story, he needs only to invent a part for him, or to give him a part actually played by someone whom the witness wishes to protect or who (like Yakovlev or perhaps an unnamed subordinate of Yakovlev or perhaps someone else) is beyond the reach of the prosecutors.

The deliberate study of a record gives the reader one advantage over a jury, to be put against the undoubted disadvantage of not having seen the witnesses. A reader can quietly examine a story over a considerable period, as a jury cannot possibly do in the tension created by the events of a trial and the need for a decision one way or the other within a somewhat limited time.

Apart from Gold's references to "Julius," whatever they may mean, the Greenglasses' testimony is the only evidence that tends in any way to connect the Rosenbergs with any act of atomic espionage. If the reader will consider the testimony referring to the most complex occurrences, the Jello box incident in New York and the Gold visit in Albuquerque, he will see how easily the witnesses, by slightly transforming slightly different events, could have included the Rosenbergs in their accounts of their own atomic espionage. The weight of the Greenglasses' testimony, and of Gold's as well, depends on their personal reliability. If evidence of their unreliability appears, it will affect the entire case of atomic espionage made against the Rosenbergs.

At the risk of anticlimax, reference should be made here to three other alleged acts of espionage by Julius Rosenberg

of which David Greenglass says Julius Rosenberg told him. In an interval of editing and typing the bomb cross-section material, Julius Rosenberg, according to David Greenglass's testimony, told Greenglass that he had taken "the proximity fuse" in his briefcase "when he was working at Emerson Radio" and given it "to Russia" (510-512). Greenglass further testified that in 1947 Julius Rosenberg told him that he had gotten information "from one of the boys" about a sky platform project (518-519). According to Greenglass, Julius Rosenberg told him on another occasion, apparently after April 1, 1946 (519, 658-659, 1060), that "they had solved the problem of atomic energy for airplanes," and "that he had gotten the mathematics on it . . . from one of his contacts." The only conversation remotely related to any of these topics which Julius Rosenberg testified that he could recall was one at their shop, occasioned by a magazine article about the sky platform (1107-1109).

The implausibility of these three items of testimony, and a fantastic quality in the latter two, reflect indeed on the dependability of David Greenglass. When in the autumn of 1953 he made a statement for Mr. Roy Cohn and Senator McCarthy about Julius Rosenberg's association with the alleged Fort Monmouth or Signal Corps spy ring, which he had not mentioned at the trial, he gave new reason for doubt about his reliability. (See Appendix 3.)

3

The Case—Rewards and Instruments

WE TURN now to a line of testimony which, even as it was given at the trial, weakens the government's case. In the light of the new evidence offered on the motion for a new trial, the government's own account of these matters given at the trial raises still more questions about the prosecution's case.

Julius Rosenberg received a degree in electrical engineering from City College, New York, in 1939. In 1940 he was employed as an engineer, working in New York for the Army Signal Corps. His salary went from \$2000 to \$3600 a year. He lost this job in February 1945, on a complaint about his "communism." For most of the rest of the year he worked in New York for the Emerson Radio Company, one of the companies with which he had been working for the Signal Corps. Here he earned about \$100 a week.

From late 1945 to the time of his arrest he participated in a succession of small businesses, formed and financed by members of his family and some others. In the spring of 1946 David Greenglass became a foreman, stockholder, officer, and director in the particular business that continued, with refinancing and change of name, as Julius Rosenberg's occupation. The little company operated a machine shop. The business succeeded for a time, and then went badly. There was considerable friction between David Greenglass and Julius Rosenberg. David Greenglass

left the business in 1949, and in May of 1950 discussion was still going on about the compensation which was to be paid him for his stock.

The Rosenbergs lived from 1942 to 1950 in a three-room eleventh-floor apartment in Knickerbocker Village, in Manhattan. They had two small sons, Robert and Michael, four and eight years old at the time of the trial. The rent of their apartment began at \$45.75 a month in 1942 and went to \$51 in 1950. Expenditures on clothes and furniture, according to testimony at the trial, were in proportion to the rent.

David Greenglass and Gold both testified that Gold paid David Greenglass \$500 in Albuquerque on June 3, 1945. Julius Rosenberg denied giving either of the Greenglasses any money in connection with espionage. (He made some personal loans to David Greenglass while they were in business together. Conflicting testimony about some other payments by Julius Rosenberg to David Greenglass just before David Greenglass's arrest is considered in Chapter 5.)

There is only one suggestion in the record of the trial that Julius Rosenberg may have gotten any money to spend on himself or his family, in connection with his alleged espionage. Ruth Greenglass, under examination by Mr. Kilsheimer, testified that at the party where the Jello box was cut, Ethel Rosenberg told her "that it sometimes cost him [Julius Rosenberg] \$50 to \$75 an evening to entertain his friends" (691). Ethel Rosenberg denied that she had made such a statement (1319). As she and her husband denied every act of espionage of which they were accused, so they specifically and repeatedly denied receiving or spending any money as a reward for, or a means of conducting, espionage. The government indeed did not seek to prove that they received any money for their own use.

David Greenglass, under examination by Mr. Cohn, testified that Julius Rosenberg told him in January 1945 that he had received other rewards for espionage.

He said he received a citation.

Q. Did he describe the citation at all?

A. He said it had certain privileges with it in case he ever went to Russia (523).

Julius Rosenberg denied ever saying anything of the sort, or receiving any such citation (1133).

It is not easy to understand what sort of thing this citation is supposed to have been. David Greenglass indeed testified only that Julius Rosenberg had told him about it. It was, however, evidently meant to be taken seriously. Radio honors are said to have been given Soviet spies in foreign countries in wartime. The word "citation," however, suggests in the present context a document, with a reference to what the recipient has done, a statement of approval, and perhaps—here—some statement about the privileges that go with it. It is hard to believe that such a document was ever given anyone on account of espionage while he was engaged in espionage or subject to any risk of prosecution for espionage. Even if it were kept locked up, it would involve some risk. In any case, it would be superfluous, for purposes of espionage. It is hard to suppose that a witness could report seriously that an alleged spy had told him seriously about any such "citation."

David Greenglass testified that, at the same time evidently, Julius Rosenberg told him that "he had gotten a watch as a reward," and showed him the watch (521). David Greenglass also testified that Ruth Greenglass told him later that Ethel Rosenberg had "received . . . a woman's watch" (521).

There were extensive cross-examinations of the Rosen-

bergs about these watches. Mr. Saypol in cross-examining both Julius and Ethel Rosenberg devoted particular attention to a watch which Julius Rosenberg testified that his father, a "clothing operator," had given him, and that he had lost on a train trip (1228-1235, 1344-1346). Nothing came of these examinations, except some light on watches as one of Julius Rosenberg's hobbies. (Another was evidently family photographs.) Reading them in cold print, one cannot avoid the conclusion that Mr. Saypol was using a familiar device to build up the charge and transform it into proof in the jury's minds.

The most interesting and instructive of the lines of evidence about rewards and instruments is that relating to the console table. The Rosenbergs testified that from 1944 or 1945 to the time of their arrest there was just one console table in their apartment. Ethel Rosenberg testified that it was not as good a piece of furniture as their "break front." Julius Rosenberg testified that he bought it at Macy's for "about \$21." Their testimony loses some of its force in the reading, and doubtless lost some in the hearing, from their failure to produce the table at the trial, or to explain why they did not do so.

David and Ruth Greenglass between them testified in answer to questions about "that" table, the one about which they testified, to seeing it in the apartment as late as 1949. (As a result of difficulties in the business, the families were perhaps seeing less of each other then than formerly.) In his cross-examination of the Rosenbergs, Mr. Saypol seems to have made it part of the government's case that the same table, in the same condition, was there from at least 1946 until the time of the Rosenbergs' arrests. The FBI first visited the apartment early on June 16, after their first meeting with David Greenglass, which had ended at

two the same morning with David in confinement, before any knowledge of this meeting could have reached the Rosenbergs. The government introduced no evidence about the few pieces of furniture then in their small living room. By the time of the Rosenbergs' arrests Ruth Greenglass, according to her testimony, had told the FBI her entire story. Before the apartment was closed and the furniture sold, at the very latest, David Greenglass, according to his testimony, had told the FBI his entire story. By Ruth Greenglass's account, and Mr. Saypol's insinuation, the table was in any event a sufficiently striking piece of furniture. It is hard to believe that if the Greenglasses' story is true the FBI would have overlooked the table when they first entered the apartment to see Julius Rosenberg or later searched it. They did search it, and they picked up various items—watches, family photographs, a can for Spanish relief contributions—which played some part at the trial.

In reading the trial record, it is hard to understand why the government did not produce the table, explain its failure to do so, or introduce testimony that no such table was in the apartment. The prosecution must have taken some pains to find and prepare the maid who worked for the Rosenbergs by the hour three times a week in 1944 and 1945, and who was to testify about the console table which she then saw. Why did the prosecution not explain, at least, what comparable efforts it had made to locate the table itself?

These were the questions which we asked each other in Chicago as we studied the record before there was any news of the table in the elder Mrs. Rosenberg's apartment in March of 1953. Until then, however, the government's failure to produce or hunt for the table was no more inexplicable than the similar failure of the defense. Now, if the uncontroverted affidavits of defense witnesses who have

never been heard are taken provisionally as true, the explanation is clear. Defense counsel and the defendants themselves, in a perfectly understandable way, lost track of the table. The government's agents did not see "the table" when they first entered the apartment, or pick it up at the time of the Rosenbergs' arrests, or hunt for it later, because there was no such table as their witnesses described; and the witnesses, and perhaps the government's representatives as well, cannot have believed that there ever was such a table. Neither were the government's agents in a position to say that the Rosenbergs' table was not in place when they first entered the apartment, and saw its modest furnishings.

The table in the elder Mrs. Rosenberg's apartment, if the uncontroverted affidavits of witnesses who were ready to testify on a new trial be taken as true, makes the facts abundantly clear. The situation should indeed have been equally clear, as it was to Dr. Harold Urey, to anyone who had only the original record to go by. The presentation of the evidence by Mr. Cohn, Mr. Kilsheimer, and Mr. Saypol, including Mr. Saypol's statements in his "summation," is an example of considerable skill in the art of rhetoric. It can, however, be followed. It is worth examination for its own sake, as well as for the light it sheds on the nature of the testimony which could be given by the Greenglasses, on whose word the Rosenbergs' convictions depended.¹

At the outset, the reader should notice that it is thinkable that elements in the prosecution's account of the table could have occurred, in a considerable number of permutations and combinations, in a variety of time sequences.

¹The table appears at the following points in the record, in direct examinations, cross-examinations, summations, and charge: David Greenglass: 521, 630; Ruth Greenglass: 706, 761; Julius Rosenberg: 1054, 1136, 1205; Ethel Rosenberg: 1297, 1355; Evelyn Cox: 1406; defense summation: 1484; prosecution summation: 1527; charge: 1561.

There may, for example, have been different tables there at different times, or one table may have been in different conditions at different times. Though there is no testimony to support such a possibility, there may have been no table there when the FBI first visited the apartment. The reader should ask himself first whether any possible version makes the prosecution's account seem trustworthy; and second whether it is not the fact, as has just been said, that the prosecution's case puts in issue the presence in the Rosenberg apartment of a single console table, without any indication of a change in character, from 1946 to the time of their arrest, Julius Rosenberg's on July 17 and his wife's on August 11, 1950.

The first reference to the console table at the trial was made by David Greenglass, under direct examination by Mr. Cohn. This was the last thing in the Monday afternoon session at which David Greenglass had testified to giving the sketch of the "cross section" of the bomb, "the bomb itself." The reference to the console table came just after the witness's testimony about the two watches and just before his testimony, the following morning, about the "citation."

Q. [MR. COHN]. Now, was there anything else that they received which they told you about?

A. I believe they told me they received a console table from the Russians.

Q. A console table?

A. That is right.

Q. When did they tell you about that?

A. That was after I had gotten out of the army [1946].

Q. Did you ever see that table?

A. I did.

Q. At their home?

A. I did.

Two days later Ruth Greenglass, on direct examination by Mr. Kilsheimer, testified as follows:

Q. Now, from time to time during the years 1946, 1947, and 1948 did you and your husband visit the Rosenbergs at their apartment?

A. Very infrequently. . . .

Q. But you did visit them from time to time?

A. Yes.

Q. Now, on any of these visits did you notice any particular piece of furniture in the Rosenberg apartment?

A. ——— [sic: there appears to have been no reply, or an indistinct one.]

Q. When was this, as best you can recall?

A. I think it was 1946.

Q. And what piece of furniture did you notice?

A. Mahogany console table.

Q. Did you have a conversation with the Rosenbergs concerning that table?

A. Yes, I did.

Q. And was your husband also present?

A. I think he was, yes.

Q. Now will you tell us what that conversation was in connection with this console table as best you can recall it?

A. I admired the table and I asked Ethel when she bought a new piece of furniture; she said she had not bought it, she had gotten it as a gift and I said it was a very nice gift to get from a friend, and Julius said it was from his friend and it was a special kind of table, and he turned the table on its side to show why it was so special.

Q. And what did he show you when he turned the table on its side?

A. There was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used

for photograph purposes, and he said when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in.

Q. And did Julius Rosenberg tell you what he photographed using the table?

A. Yes. He took pictures on microfilm of the typewritten notes.

In the day intervening between the two passages just quoted David Greenglass testified about the table under cross-examination by Mr. Emanuel Bloch. He testified that the console table was "used for photography," that "Julius told [him] that he did pictures on that table." In response to the question, "Were you ever at the Rosenbergs' house when food was served on that table?" he answered: "I might have been." He testified that this was the only console table he had seen in the Rosenbergs' living room and that he last saw it "some period between '46 and '49. I can't place it."

Ruth Greenglass under cross-examination by Mr. Alexander Bloch testified that she had last seen the console table at the Rosenbergs' apartment in 1948 or 1949, apparently—judging both from her earlier testimony on direct examination and from her response to a question on cross-examination—the last time she was there. She said, "I think I was there in 1949." In response to the question, "What part of 1949?" she said, "Probably the beginning."

The Rosenbergs gave their account of their console table under direct examination. Under cross-examination, Julius Rosenberg said he last saw it when he was arrested (1211). Ethel Rosenberg seems to be giving the impression that it was there until the time of her arrest (1358). In any event, it was for the prosecution to show any change in the identity, condition, or location of the table, and prosecuting counsel neither introduced any evidence of such a change

nor asked any question designed to elicit any answer about any change in its identity, condition, or location.

On the contrary, Mr. Saypol's cross-examination of the Rosenbergs clearly proceeded on the assumption that they were talking about only one table and it was without any reference to any change.

Here indeed Mr. Saypol begins the sleight of hand by which he will finally identify the table described by Ruth Greenglass with a table shown to the jury in two photographs. He does not and could not say in words that the photographs show a table with the characteristics described by Ruth Greenglass, but he leads the jury to think so, in spite of their eyes, as clearly as if he had said so. When we come to Mr. Saypol's summation about the maid, Evelyn Cox, we shall find that her testimony about the table shown in the photographs is treated as the equivalent of testimony that she saw such a table as that described by Ruth Greenglass.

Mr. Saypol first made use of the photographs on the cross-examination of Julius Rosenberg, who testified that the Rosenbergs' table was "much plainer looking than" the table shown in the photographs. On the cross-examination of Ethel Rosenberg, Mr. Saypol again produced the pictures. He asked Ethel Rosenberg "which of these tables resemble the console table that your husband, you say, bought at Macy's?" Mr. Emanuel Bloch observed: "Well, there is no such testimony, your Honor, that these are the tables. I believe Mr. Saypol introduced these to show a resemblance."

"THE COURT. He just asked her which of the tables did it resemble.

"MR. E. H. BLOCH. I am sorry. I didn't hear the word 'resemble,' that is why I got up."

Ethel Rosenberg then answered Mr. Saypol's question.

She said that the pictures "look a lot more fancy than what I had, but I would say that [they have] some similarity."

Mr. Bloch has made his point, but there are limits to the extent to which defense counsel may usefully labor such a point, and Mr. Saypol is on the way to identifying the photographs with the microfilm table, in his treatment of Mrs. Cox's testimony in his summation. For Mrs. Cox, the Rosenbergs' part-time maid in 1944 and 1945, did testify later, under direct examination by Mr. Saypol, that the pictures resembled the console table in their apartment then. And Mr. Saypol did represent in his summation, after the close of the evidence and after Mr. Bloch's summation, that Mrs. Cox had testified to the presence of "the table" in the apartment. Nevertheless, she gave no testimony whatever, apart from her testimony about the photographs, as to the physical characteristics of the table. The photographs did not show that the table photographed had any characteristic or device to make it a "special kind of table" equipped for use in microfilming.

Before the cross-examination of the Rosenbergs was completed, one other piece of evidence had been introduced about a characteristic of the table relevant not to its use in microfilming but to its suitability as a reward, its value in 1944. Though not under oath, Mr. Saypol in effect testified that no console table could have been bought in 1944 in Macy's for less than \$85. A part of his cross-examination of Julius Rosenberg was as follows:

Q. Now you bought this table in 1944 or 1945, during the war; is that right?

A. That is correct, sir.

Q. Did you have any trouble finding any furniture at that time?

A. That was on the floor of Macy's. There was a big display, many little tables were on the floor.

Q. The place was full of little tables?

A. That's right.

Q. Don't you know, Mr. Rosenberg, that you couldn't buy a console table in Macy's, if they had it, in 1944 and 1945, for less than \$85?

A. I am sorry, sir. I bought that table for that amount. ["About \$21".] That was a display piece, Mr. Saypol and I believe it was marked down.

Q. You mean the place was full of marked-down tables?

A. That is correct, sir (1211).

The line between legitimate cross-examination and questionable testimony by unsworn counsel is doubtless sometimes hard to draw. Even though defense counsel, for reasons which have been suggested, did not object, this particular piece of cross-examination seems to amount to testimony.

The defense introduced Mr. Thomas V. Kelly, a member of Macy's legal staff, who testified that a search had been made for a record of the sale in question. Julius Rosenberg testified that he had paid cash but signed a slip for the purpose of arranging for delivery of the table. Mr. Kelly testified that some of Macy's records for 1944 and 1945 had been destroyed. He left it open whether delivery records might be found. Julius Rosenberg testified that he had been told that these records were kept by number. Until the last days of the case, Mr. Emanuel Bloch was working with Macy's in an effort to locate the order for the delivery of the table.

The Rosenbergs' former maid, Evelyn Cox, was one of the few non-accomplice witnesses introduced by the prosecution on any issue of fact about the acts or lives of the Rosenbergs. (It is doubtful whether any of the non-accomplice witnesses would have been permitted to testify, or would have qualified the accomplice witnesses to testify,

under the New York statutory rule which prohibits accomplice testimony unless it is corroborated by non-accomplice testimony which itself "tends to connect the accused with the crime charged.") As we have observed, Mrs. Cox testified under direct examination by Mr. Saypol that the pictures shown her were like the console table that she saw in the Rosenbergs' apartment in 1944 and 1945 when she worked there by the hour three times a week.

On direct examination she also testified that when she first saw the console table, as she recalled, in 1945, she asked Ethel Rosenberg about it. "It was such a pretty table and she said that a friend of her husband gave it to him as a gift. Then she added that he hadn't seen him for a long time and it was a sort of a wedding present."

She also testified that "there [came] a time" when the table was put in the closet; and that Ethel Rosenberg said it was "because the place was too congested." She testified that "the closet is a very large closet"; that she "saw [the table] in the closet several times." To Mr. Saypol's question, "And this table was there from that time on, standing in the closet?" she answered "Yes, sir."

Ethel Rosenberg had testified under cross-examination that she might well have put the table in the closet while making changes in the apartment. "I may or may not have put it there, and I cannot recall, because there were any number of things I put into closets and took them" [sic].

Mr. Saypol in his summation was to treat the testimony about the presence of the table in the closet as evidence of "hiding."

Before coming to this summation, we may notice a few items in the testimony not concerned simply with the table, which throw some light on the table testimony.

The only testimony in the entire record of the case that Julius Rosenberg ever developed any kind of photographs

is Ethel Rosenberg's testimony that he was unsuccessful when he tried development as a hobby in 1950 (1360-1361). Julius Rosenberg testified that he had an old camera which he used, and that he sometimes borrowed other cameras (1143-1144). There is no evidence whatever that he ever made any microfilm photographs at all. In his cross-examination of Ethel Rosenberg, Mr. Saypol asked whether a developer and trays were in the apartment when the FBI came. He thus implied, for the jury, that they were (1361). Ethel Rosenberg answered that she thought a developer was there. Julius Rosenberg's attempt at the hobby would explain the presence of the developer. No other evidence about photographic equipment was presented.

There is no evidence that the Rosenbergs' apartment on the eleventh floor was not equipped with curtains or blinds and locks.

As Dr. Urey has observed, anyone with any experience in microfilm work, such as many scientists have, would realize that a table of the sort described by Ruth Greenglass would be unique, if not unimaginable; and that a much simpler and less noticeable device would be a microfilm camera, kept—when not in use—in a locked case in a locked closet. No ordinary microfilm equipment, nothing at all like what Ruth Greenglass described, would have fitted such a table, and it is hard to visualize anything of the sort at all.

Nevertheless we must recall finally the inferences which are to be drawn from the failure of the government to offer any testimony about what the FBI observed when they first entered the apartment the day after David Greenglass's first questioning, or their efforts, if any were made, to locate the table later. It is a fair inference that no table with the physical characteristics vaguely described by Ruth Greenglass, or with the 1944 value attributed to such tables by Mr. Saypol, was there then; or, in the state of the record, at any other time.

Mr. Saypol's summation was the climax of the line of evidence which we have been considering. In reaching it one may usefully keep in mind the half-dozen issues about the table. They may be summarized somewhat as follows:

- (1) Source: "the Russians," gift, wedding gift; Macy's.
- (2) Use: microfilming; household purposes.
- (3) Character: as described by Ruth Greenglass; ordinary.
- (4) Identity: like pictures; "plainer"; but turning, in the summation at least, into a representation that the pictures represent "the table" which, if it means anything—as the emphasis implies that it does—means "the table" described by Ruth Greenglass.
- (5) Price: not "less than \$85"; "about \$21."
- (6) Presence in closet "several times": "hiding"; moving furniture.

As to "source," it will be noticed that a wholly new character appears at the end of Mr. Saypol's summation. The preceding account of the evidence about the table will, it is hoped, enable the reader to deal fairly with the other parts of the quotation.

The portion of Mr. Saypol's summation dealing with the table is as follows:

You heard the Rosenbergs testify here. You heard how anxious they were to help this country by telling the truth about their activities. You heard them tell about the \$21 console table. You heard the testimony about what was done to that console table, so that it was used for microfilming. How strange, on the one hand, the testimony from the Greenglasses that that was a present from the Soviet, the testimony from the Rosenbergs that they paid \$21 for it in 1944 and 1945, when furniture was scarce, at Macy's; that it was delivered; and then a disinterested woman, even in the face of adroit cross-examination, resolute in her determination to tell the truth, telling the truth, she saw the table. Mrs. Rosenberg said it was a wedding present

from a friend of Julius or her husband, whom they hadn't seen for many years, and this remarkably strange behavior taking the best piece of furniture in the house and storing it in the closet—why did they have to hide it? The source was from a friend, a friend with whom they had been working for ten years, in a type of activity which was perilous to the welfare of our country.

It may be that such treatment of evidence is fairly common in metropolitan criminal practice. Mr. Thomas F. Murphy, as chief prosecutor, introduced in his summation at the end of the second Hiss trial an entirely new theory. This was a theory that the expert testimony showed not only that the Hiss typewriter was used to produce the typewritten documents, but also that Mrs. Hiss must have typed them.²

The skill used by Mr. Saypol in developing the table evidence is a symptom of the degradation of criminal justice in our metropolitan centers. In a capital case arousing—even more than the Hiss case—the passions associated with war, it has a peculiar significance. The rhetorical art is of the same sort as that used later by Mr. Roy Cohn, Mr. Saypol's junior in the case, in helping Senator McCarthy conduct his unsuccessful revolution against the Army, the Senate, and President Eisenhower.

² An experienced English judge, the Earl Jowitt, comments: "Had this happened in England, I can hear the judge saying: 'But, Mr. Murphy, have you laid any foundation for this suggestion in anything you have said to the expert witnesses who have dealt with this matter?' and when Mr. Murphy had replied, as he would have replied, in the negative, the judge would have continued: 'Then surely it cannot be right that you should advance a new theory when the proceedings have reached such a stage that Mr. Cross [defense counsel] no longer has an opportunity of answering this suggestion.'" *The Strange Case of Alger Hiss*, p. 320 (American edition, 1953).

4

The Case—Near Espionage and a Night Trip

THE indictment and prosecution of the Rosenbergs covered acts other than those relating to atomic espionage. The charge was a conspiracy, with others named (David and Ruth Greenglass, Harry Gold, Anatoli A. Yakovlev), to commit espionage in general, extending not only through the years of the main alleged acts of atomic espionage but through a later period of conspiracy, including alleged preparations for flight just before the time of David Greenglass's arrest in June 1950.

The co-defendant Morton Sobell was charged with being a party to this conspiracy. The case against him depended on his acquaintanceship with Julius Rosenberg, on the testimony of Max Elitcher, to which we are coming, and on Sobell's trip to Mexico, with his family, soon after the arrest of David Greenglass. No testimony whatever was introduced tending to show his participation in atomic espionage. The evidence against him with respect to other types of espionage is weak, as we shall see. Nevertheless he received a thirty-year sentence. The case against him, such as it is, depends on the case against the Rosenbergs, though it is much weaker; and it was used as a feature of the case against the Rosenbergs. The two cases were interwoven, particularly the parts dealing with alleged attempts at non-atomic espionage and one alleged case of espionage of an

unspecified character. The theory that the facts charged constituted a "single" conspiracy is very questionable, and the reader should not be surprised if he has some difficulty with this theory of the case. When he comes to the facts, he may well have still more trouble.

The government opened its case against the Rosenbergs with the testimony of Elitcher. It is sometimes useful simply to change the order in which a story is told in order to correct suggestions and compare matters that may otherwise not be compared. In particular, the testimony thus far outlined was designed, at the least, to characterize Julius Rosenberg as a rather sophisticated spy, accepted as a well-established member, though not a top member, of a spy hierarchy. The Elitcher account, from its beginning with 1944 to its end with 1948, characterizes Julius Rosenberg as somewhat naive, even for an academic engineer. In three episodes of attempted and unsuccessful non-atomic espionage throughout this period, Julius Rosenberg appears as something of a simpleton. If Elitcher's account is true, it may seem to weaken rather than strengthen the Greenglasses' testimony.

There is, however, no reason, even in the light of the verdict, to think his account true. Elitcher testified that his wife was present at the beginning of the first, most important, and most implausible of the three episodes. The government named her in its list of witnesses, but did not put her on the stand. Elitcher has since testified before the House Un-American Activities Committee and he may do so again. Nothing that he or his wife could say after the trial would be likely, however, to repair the effect of the government's failure to call his wife to testify to the facts of this first episode.

At the time of the Rosenbergs' arrest, as at the time of the trial, Elitcher was in danger of a perjury prosecution,

in effect for falsely swearing that he was not a Communist on an application for federal employment. He was the sole support of his wife and two children (289). He has not been prosecuted. He was not charged as an accomplice with the Greenglasses, the Rosenbergs, and Morton Sobell. On his own evidence he seems to have been an accomplice of Julius Rosenberg and Morton Sobell. (See 259 ff., 276.) His testimony is, in any event, open to all the objections to accomplice testimony.

Whether Elitcher was not on his evidence an accomplice in a conspiracy separate from the atomic espionage conspiracy involving Fuchs and Gold is another question. It is similar to a more important question to which we shall soon come, a question arising in the case of the Rosenbergs' co-defendant, Morton Sobell. Elitcher's testimony, together with evidence of Sobell's alleged flight which will be discussed in the next chapter, is all that supports the conviction of Sobell and his thirty-year sentence.

Three episodes of unsuccessful attempts at non-atomic espionage on the part of Julius Rosenberg are the subjects of Elitcher's most important testimony about Julius Rosenberg. The first is supposed to have occurred in June 1944, in Washington, five months before the first episode of alleged atomic espionage described in the Greenglasses' testimony. The second took place in September 1945, also in Washington. The third was in June 1948, in New York. In addition, Elitcher testified to conversations in which Julius Rosenberg is said to have talked about his own espionage activities with surprising freedom; to association between Julius Rosenberg and Morton Sobell; and to one episode, the most serious item in the case against Sobell, in which Elitcher testified that he saw Sobell and that Sobell told him that Sobell saw Julius Rosenberg engaged

apparently in a step in some undefined type of espionage.

Elitcher (under direct examination by Mr. Saypol) described as follows Julius Rosenberg's first attempt, so far as the record goes, at any kind of espionage. He said he himself had graduated as an electrical engineer from City College a year ahead of Julius Rosenberg, and knew him there, but not very well. He testified "I don't recall very much of him" (217). He had known Morton Sobell, a classmate and another electrical engineer, since high school days. He remembered that Sobell and Julius Rosenberg had both interested him, in college days, in the Young Communist League. Sobell was, as Julius Rosenberg was to testify, a friend of Julius Rosenberg, though they had met rarely after their college days. As to Julius Rosenberg, Elitcher testified "I don't recall attending any meetings with him."

Sobell had come to Washington late in 1938 and after a time got a job in the Bureau of Ordnance in the Navy Department, where Elitcher also was employed. Elitcher and Sobell had taken an apartment together, which they kept until Sobell left to study at the University of Michigan in 1941. Elitcher testified that he became a Communist Party member in 1939 at Sobell's suggestion, and that they both belonged to the same group. "Sobell visited Washington on about two occasions between 1941 and 1944," according to Elitcher's testimony. Elitcher had not "seen" or communicated with Rosenberg between 1938 and June 1944. The government introduced no evidence that Sobell or anyone else had prepared either Elitcher or Rosenberg for their meeting in June of 1944, nor did prosecuting counsel ask any questions designed to elicit an answer showing that either Elitcher or Rosenberg was prepared for this meeting.

Nevertheless one evening in June of 1944 during a business trip to Washington Julius Rosenberg called Elitcher,

came to their apartment for a visit; asked that Elitcher's wife leave them alone; and when she had done so, urged Elitcher to bring him any useful secret information he might be able to get from the Bureau of Ordnance. Elitcher did not on direct examination testify about his own response; but on cross-examination he testified, "I told him I would see about it" (299).

Elitcher's wife was not called to testify about the occasion, though she was on the government's witness list.

Julius Rosenberg by implication denied asking that she leave them. He testified that he felt lonely in the evening, recalled that Elitcher was in Washington, called him and paid a simple social call, without any references to espionage at all (1149-1152).

In September 1945, according to Elitcher's testimony, Julius Rosenberg telephoned him one Saturday morning from the Union Station in Washington; came over for a fifteen- or twenty-minute call; and again asked him whether he "would want to contribute" to satisfy "a continuing need for new military information for Russia." Elitcher testified: "I said I would see and if I had anything and I wanted to give it to him, I would let him know." Julius Rosenberg placed the only possible corresponding visit in April 1945, and gave an entirely different account of it (1154-1157; cf. 309-315).

There is no evidence that these conversations led to any transmission of information whatever, or to any completed espionage of any sort. Julius Rosenberg denied them both.

In spite of the futility of these alleged conversations, Elitcher testified that on a trip to New York in 1948, apparently in June, when Elitcher was thinking of leaving the Bureau of Ordnance, Julius Rosenberg urged him to stay at the Bureau and help with espionage. "Sobell was along and I recall that he agreed with Rosenberg in his trying to convince me to stay down at the Bureau of Ordnance

[sic]. However, I convinced him that I was not going to change my plans; I was going to leave Washington." Julius Rosenberg denied that he had such a conversation with Elitcher (256-258; 1158).

Such are the attempts at espionage by Julius Rosenberg, if they went even so far as to be called attempts, to which Elitcher testified. He testified also to three conversations with Julius Rosenberg, in two of which Julius Rosenberg is said to have referred to his espionage activities, in a quite unguarded way. In the conversations with Julius Rosenberg, according to Elitcher's testimony, there were occasional references to Sobell. Sobell himself appeared again in the story, first on a camping trip in 1944, then at the General Electric plant in Schenectady in 1946, and finally at the Reeves Instrument Company's plant in New York, in 1947 and 1948. In the course of Elitcher's conversations with Sobell there were, according to Elitcher's testimony, references to Julius Rosenberg. Julius Rosenberg denied every alleged reference in his conversations to any espionage on his own part or on Sobell's part, and every charge of espionage on Julius Rosenberg's part which could be drawn from Elitcher's testimony about his conversations with Sobell.

Not unreasonably, in view of the weakness of the evidence against him, Sobell, following his lawyers' advice, did not take the stand to testify. His lawyers' judgment was doubtless based on their estimate of the risk that cross-examination and prosecutors' insinuations about Communism would prejudice the jury, and their hope that they could effectively bring out the weakness of the prosecution's evidence. They doubtless knew that there was a risk that the jury, in defiance of the law, would draw an unfavorable inference from Sobell's silence. One cannot say that in the circumstances of 1951 their judgment was mistaken, though the close estimates of probabilities involved in such a judg-

ment always invite criticism in the light of hindsight. The reader may remember that an inference of guilt from a defendant's exercise of his right not to testify is not only forbidden by law, and by judicial instructions given in this and every case of the sort; such an inference is also, though at first sight plausible, unwarranted in logic, in view of the alternative explanations which are often, and certainly in this case, quite sufficient to account for an exercise of his right by a defendant. The prosecution, it will be recalled, must prove its case, beyond a reasonable doubt.

Elitcher testified to two conversations with Sobell while Sobell was engaged on classified work at the General Electric plant in Schenectady. In one, Sobell is said to have inquired about the existence of written reports about the fire control system, a classified "confidential" project, on which Elitcher was working. Elitcher told him, in effect, that there was no such report as Sobell wanted, but that Elitcher might get him one when it was prepared. In the other, according to Elitcher, Sobell advised him to see Julius Rosenberg again, and "implied that it had to do with this espionage business." (This conversation led to one of those two conversations in which Julius Rosenberg, according to Elitcher, simply talked about his espionage, this time telling Elitcher to stay away, in view of a feared leak.)

Elitcher testified to three conversations with Sobell after Sobell came to the Reeves Instrument Company in 1947. In the first two, according to his testimony, Sobell asked him for recruits for espionage. In cross-examination, it appeared how easily a natural inquiry about engineering personnel available for employment could be transformed in testimony into an inquiry about possible recruits for espionage.

We have already considered the third of these last three

conversations, the one in which—according to Elitcher—Sobell and Rosenberg urged him to stay at the Bureau of Ordnance.

We come finally to the only story of any complexity told by Elitcher about Sobell. As will be seen, there is a statement in it as to a remark by Sobell about Julius Rosenberg. It is worth noticing that Elitcher first made a written statement of this story for the FBI after making two written statements for them which had no reference to it, after testifying once before the grand jury without mentioning it, and some five months after he was first questioned by the FBI (330-341). He testified that he first told the FBI about the supposed episode after his first two written statements, and before his appearance before the grand jury.

In July of 1948, Elitcher, according to his testimony, drove his family (he then had one child) to New York to look for a job. On the way up he became fearful that someone was following him. He was to stay at Sobell's home in Flushing. They got there and put the child to bed. Then Elitcher told Sobell about being followed. Sobell was disturbed. After thinking about it, he told Elitcher that he had material too valuable to be destroyed, and "he [Sobell] wanted to deliver it to Rosenberg that night." In the course of a discussion "he [Sobell] insisted and said that he was tired. He asked me to go along. He said he was tired, and that he might not be able to make the trip back." Elitcher finally agreed. "Upon leaving I saw him take what I identified then as a 35 millimeter film can" (259-261).

They drove some ten miles to Catherine Slip in lower Manhattan. There Sobell got out and took the can with him. Elitcher parked, evidently by agreement.

Sobell "came back approximately a half hour later or perhaps a little shorter, and as we drove off I [Elitcher] turned to him and said, 'Well, what does Julie think about this, my being followed?'

"He said 'It is all right; don't be concerned about it; it is O.K.' He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and therefore everything was all right. We proceeded back to the house" (261).

If this story were not enough to occasion doubts about Elitcher's veracity, it would do much to increase our doubts about the Greenglasses' testimony. This loquacious Julius Rosenberg is hardly the spy of the Greenglasses' accounts, experienced in atomic espionage, with secret microfilm apparatus in his apartment (and rewarded by a citation and a watch), now further matured by over two years more of experience and by association with those Russian agents whose rigorous practice was to be described by Gold. There is a serious internal inconsistency in the prosecution's characterization of Julius Rosenberg.

Moreover, our other doubts about Elitcher may be accentuated when we come to Elizabeth Bentley. She was to testify to receiving five or six calls from someone calling himself "Julius" between the autumn of 1942 and the autumn of 1943. Elitcher's testimony as to what Sobell told him about Julius Rosenberg's remark about Miss Bentley is implausible not only on its face but also because of its too perfect introduction to, and confirmation and extension of, Miss Bentley's testimony. Miss Bentley first became famous, as a result of her testimony before a Congressional committee, in July of 1948. There is no testimony except hers as to espionage activity on the part of either of the Rosenbergs before June 1944, at the earliest.

However skeptical one may be about Elitcher's testimony, it is his account of this last episode which must have been largely responsible for Sobell's conviction for violating the Espionage Act.

The Case—Flight

BESIDES Elitcher's testimony, there is only one other point in the case against Sobell. After the arrest of David Greenglass, Sobell took a trip, with his wife and two children, to Mexico.

William Danziger, a friend of high school, college, and Bureau of Ordnance days, another electrical engineer, an acquaintance of Julius Rosenberg, testified under examination by Mr. Cohn that he talked with Sobell at Sobell's house about June 20, 1950, shortly before Sobell's departure. Sobell told him he was going "for a vacation," by plane, to Mexico City. Later Sobell wrote him, with two enclosures to be forwarded to relatives of Sobell, with "M. Sowell" and a forgotten Mexico City address on the envelope. Danziger responded. Sobell wrote again, in answer it seems, with an enclosure for a relative, and "M. or Morty Levitov" (a relative's last name) and a return address, apparently a different one, on the envelope.

Somewhat casual acquaintances outlined the course of the trip to Mexico. People he met during the trip testified to his presence in Mexico City, and at times subsequent to the arrest of Julius Rosenberg, in Vera Cruz (under the name of "Sand"), in Tampico (under the name of "Salt"), and back in Mexico City (registered as "Solt" for his plane trip). His wife and children did not accompany him on his trip to Vera Cruz and Tampico.

In an affidavit filed on his appeal from an order denying a new trial, Sobell avers that his trip was a vacation, taken with some thought of a job change; and that he was upset by news of the arrest of Julius Rosenberg. He was already disturbed by the "conditions in the world."

An acquaintance from Mexico City, Manuel Giner de Los Rios, testified that Sobell asked him about getting out of Mexico, but not about getting to any specified place outside Mexico.

Giner de Los Rios testified:

... He was a little nervous, a little worried. . . . He told me he was worried because—he said he was afraid to return to the Army, the U. S. Army since he has already seen a war, has experienced a war.

Q. [MR. COHN]. Did he make any statement as to why he wanted to leave Mexico?

A. Only because he was afraid.

Q. Did he say specifically what he was afraid of?

...
A. He was afraid that they were looking for him so that he would have to go to the Army.

Q. Did he say who he thought was looking for him?

A. The military police.

Q. What did you say?

A. I told him I cannot do anything to help him and that I can't get any way for him to leave Mexico (922-923).

James S. Huggins, an immigration inspector for the United States at Laredo, Texas, testified to the circumstances under which Sobell with his wife and children returned from Mexico. Mexican security police brought him in. Though he did not recall who gave him the information, Huggins wrote on his record card (dated August 18, 1950) for Sobell: "Deported from Mexico." The FBI, already waiting, at once took Sobell into custody. Huggins's testi-

mony tends to confirm the Sobells' accounts of their kidnapping in Mexico City—for example, the account given by Morton Sobell in his affidavit on his motion in arrest of judgment (31).

Somewhat as the illogical consciousness-of-guilt argument seems to have had an effect in the Mooney and Sacco-Vanzetti cases, this evidence may well have had considerable effect on the jury here, even though the judge warned them in his charge that flight, even if proved, does not show that any crime or any particular crime has occurred. If one is sufficiently skeptical about Elitcher's reliability, this may appear to be the only evidence about Sobell alone to support his conviction for violating the Espionage Act.

Elitcher's testimony about Sobell's references to Julius Rosenberg in relation to the kind of attempts at non-atomic espionage which Elitcher described are certainly no more significant than Elitcher's testimony about Julius Rosenberg himself. There is no testimony that can be fairly read as implicating Sobell in the Rosenbergs' alleged atomic espionage. The timing of his trip to Mexico may, at first, seem to indicate association with the Greenglasses, and so perhaps with their atomic espionage; but a little reflection on the general state of the record will indicate that, in the absence of any testimony by the Greenglasses or anyone else to that effect, one can hardly infer from the timing of the trip alone that Sobell was associated in the atomic espionage to which the Greenglasses and Gold testified at such length.

On the original appeal from the conviction, the Court of Appeals observed that the conviction of the Rosenbergs must depend on the testimony of the Greenglasses. There is no evidence in the case against Sobell even at all comparable in persuasiveness to the Greenglasses' testimony about the facts of atomic espionage, taken by itself, with-

out correction for the skepticism which must be created by an examination of their testimony about rewards. So far as the conviction of Sobell depended on the jury's vague sense of his association with the Rosenbergs, it is of course insupportable.

Finally, it must be observed that there is a serious question whether there was any legal justification for treating the events described by the Greenglasses and Gold and the events described by Elitcher as parts of a "single" conspiracy at all. On the original appeal from the conviction, Judge Frank wrote the opinion for the Court of Appeals and concurred in affirming the judgment convicting the Rosenbergs. He dissented, however, in maintaining that the conviction of Sobell was unwarranted. He took the position that the evidence against Sobell, so far as it showed participation in any conspiracy, may have shown participation in a "different" conspiracy from the conspiracy primarily concerned with atomic espionage, which was the subject of the Greenglasses' and Gold's testimony. The statement may seem "metaphysical" in an objectionable sense, but it is one way of expressing the practical judgment that it was so prejudicial to Sobell to try him simply for participation in espionage with the others, that on that ground alone his conviction should have been set aside.

The case against Sobell seems to have been made largely by the psychological suggestions, if not the logical inferences, resulting from his association with the Greenglasses and the Rosenbergs in some of the testimony. Somewhat similarly, the case against the Rosenbergs seems to have been somewhat strengthened, in the everyday psychology which is so free from the checks of logic, by what was said at the trial about Sobell.

While Julius Rosenberg testified clearly that he knew

Sobell, and seems to have implied that he was friendly with him, he also testified that he rarely saw him. He recalled seeing him, since their college days together, only a few times: once "for a couple of seconds" (with Elitcher and his brother) in 1940 at a Washington swimming pool; and then in 1946 and 1947, "once or twice a year" (1146-1149).

What is lacking in testimony about the relationship between Sobell and Julius Rosenberg, and so about the significance, for the case against the Rosenbergs, of Sobell's trip to Mexico, was made up by Mr. Saypol in his cross-examination of Julius Rosenberg (1194, 1198-1199).

In dealing with some testimony by David Greenglass, Julius Rosenberg had testified to his acquaintance with a Joel Barr; and that Barr was interested in music and had told him and others in 1947 that he was going to Europe to study music. Julius Rosenberg testified that Joel Barr's brother later told him that Joel Barr had gone to Europe—"I think it was Sweden" (Mr. Saypol objected to further clarification on the ground that it was hearsay) (1109-1111).

On his cross-examination of Julius Rosenberg, Mr. Saypol asked questions, often amounting virtually to testimony, about Julius Rosenberg's associates, which contributed to the constant stream of references to Communism in the prosecution's case (1192-1203). In the midst of this questioning Mr. Saypol asked, simply:

When did Joel Barr leave the country?

A. I don't know exactly, sir, but it was either the end of '47 or the beginning of '48 (1194).

This slight and perhaps harmless reference to an event connected with the "flight" theme was supplemented not only by the long sequence of at least insinuating questions about associates, but also by a particular "question" which

deserves attention. Mr. Saypol brought out Julius Rosenberg's acquaintance with an Alfred Saurent, and the fact that Alfred Saurent had lent money to Julius Rosenberg, of which \$400 was still due.

Then he asked:

When did you see Saurent last, you say?

A. In 1950.

Q. Where is he now, do you know?

A. In Ithaca.

Q. How do you know that he is in Ithaca now?

A. Well, I saw the name of his wife on the [government's] witness list, and the address is given as Ithaca, so I figured he is still in Ithaca.

Q. You have no other knowledge of his whereabouts, is that it?

A. No, I have no way of knowing.

Q. Don't you know that he is in Mexico?

Counsel for the Rosenbergs and counsel for Sobell at this point joined in a motion for a mistrial. In denying the motion, Judge Kaufman said: "I don't know what the excitement is over, asking whether a witness is in Mexico" (1198-1199).

There is in the record no evidence that Saurent was in Mexico. It is in fact at least doubtful whether he had left the United States at all. His wife, though on the government's list of witnesses, was not called to testify. Mr. Saypol's "question" was technically cross-examination and not "evidence." It was on a collateral issue. In connection with Sobell's trip to Mexico and the entire line of questioning of which it was a part, this "question" seems to have been, in Mr. Emanuel Bloch's words, "highly inflammatory."

Sobell's trip and Julius Rosenberg's friends' travels (if the latter had been in evidence) would have proved even

less than Judge Kaufman indicated. A considerable number of people, uneasy at the reaction and the threats of war in 1950 in the United States, left the country. In particular, people affiliated in any way with the left were alarmed by the means available to the government for laying foundations for perjury prosecutions and then proving them. I recall a loyalty case in which a perfectly innocent government employee's wife, with former left-wing associations, refused to make her defense. It is necessary to recall vividly the tension of the times in order to appreciate the influences at work on Sobell and some, perhaps, of the Rosenbergs' friends; the fears of witnesses like the Greenglasses and Elitcher; and the impression which must have been made on the jury by constant return to the theme of Communism and Communist associates.

The other lines of flight evidence relate to supposed evidence of preparation for flight by Julius Rosenberg or the supposed participation by him in preparations for flight by David Greenglass. There is one rather simple line of evidence designed to show preparation for "flight" on the part of the Rosenbergs. It is supplemented by a line of evidence which might conceivably show either preparation by Julius Rosenberg for his own flight (perhaps with his family), or a step to help flight by David Greenglass. A third line of evidence was designed to show that Julius Rosenberg urged flight on David Greenglass, and gave him \$5000 to help in that flight.

The simple line of evidence will be considered first. It was given by a photographer who was later conceded to have made what may be regarded as a serious misstatement in his testimony. Whether it was an unimportant slip or prejudicial perjury was an issue on the defendants' first motion for reconsideration of the case, following the Supreme Court's final decision not to review the judgment

of the Court of Appeals affirming the judgment of conviction and refusing to review the sentence. We shall come to that motion later, but we may conveniently anticipate here what was to be conceded by the government when it came to the consideration of the motion.

The government introduced as the last witness at the trial a photographer, Ben Schneider, who was not on its list of witnesses (1424 ff.). The prosecution supported the introduction of the witness on the ground that he had just been discovered and that his testimony was to be used "in rebuttal." Schneider was asked by Mr. Saypol in direct examination the following question: "Last May or June or sometime in the spring or summer, were you visited by a family consisting of a husband and wife and two children, at your place of business?" Schneider replied in the affirmative, and testified that the children appeared to be about six and four years old. He testified that they ordered three dozen photographs of passport size and paid \$9 in cash for them. He said that the day before his testimony FBI agents had come to him for the first time and showed him photographs of Julius Rosenberg. He identified both Julius and Ethel Rosenberg in court. After he had described on the witness stand the occasion when the photographs were taken, Schneider was asked the following question about Julius Rosenberg:

Q. And is that the last time you saw him before today?

A. That's right.

On cross-examination Schneider defined the time somewhat more exactly, as before July 1950. He had testified on direct examination that he remembered the occasion partly because it was late on a Saturday morning. On cross-examination the following sequence of questions and answers took place:

Q. Did you see the Rosenbergs from the time you say you took pictures in your place, in June 1950, until the time you walked into this court room?

THE COURT: He answered that question.

MR. E. H. BLOCH: I am sorry.

MR. SAYPOL: I object to it.

THE COURT: You object because it has just been answered?

MR. SAYPOL: Yes.

THE COURT: I understood he answered. He said "no."

MR. E. H. BLOCH: He said "no"?

THE COURT: That is right.

MR. E. H. BLOCH: I didn't so understand, Your Honor.

In this little flurry Mr. Bloch's question is taken as a repetition of the question asked on direct examination. In retrospect it seems fair to say that the witness repeated his answer to the earlier question.

Here, however, we may anticipate one point made on the later motion to which we have referred. It was admitted by the government on that motion that the witness had in fact been in court the day preceding the day on which he testified. He was accompanied by a representative of the FBI. Apart from witnesses whose testimony takes only seven pages in the record, Julius Rosenberg and Ethel Rosenberg were the only witnesses to testify on that preceding day. Counsel for the Rosenbergs contended on the record that the examination of Schneider constituted the knowing use of perjured testimony by the prosecution. Judge Ryan in the District Court held that if it was perjury it was not on a material point; and Judge Swan, for the Court of Appeals, in affirming his judgment denying the motion, agreed with him and held in addition that "on cross examination of Schneider at the trial both court and counsel treated the question as meaning 'before the trial.'"

Both Judge Ryan and Judge Swan considered the point

immaterial on the ground that the Rosenbergs had not denied going to Schneider's shop. Schneider had, however, helped himself to recall the occasion, and to make his recollection seem plausible, by saying, among other things, that the man in the party had told Schneider that he was going to France to look out for some property which had come to his wife. Julius Rosenberg denied ever making any such statement to anyone (1279). Ethel Rosenberg denied that the Rosenbergs had ever paid much more than a dollar for any set of pictures at any time and she denied that they had ever had any passport pictures taken. Julius Rosenberg denied that he had had passport pictures taken in May or June, 1950, whatever other pictures he might have had taken (1277-1280; 1361-1366).

The reason for the Rosenbergs' hesitation in testifying about their presence at Schneider's shop on that late Saturday morning at least eight months before appears in their testimony. Both testified that it was one of the family's small pleasures to have pictures taken in such shops when they went out for a walk. The children, and particularly the elder boy, seem to have enjoyed visiting photographers' shops. Ethel Rosenberg testified, "We happen to be what you would call 'snapshot hounds' and that bunch of pictures that you saw there doesn't nearly represent all the snapshots and all the photos that we have had made of ourselves and the children all through our lives" (1363).

She referred to a batch of pictures picked up by the FBI when they went to the Rosenbergs' apartment, called for by Mr. Bloch after the cross-examination of Julius Rosenberg by Mr. Saypol on the preceding day. Mr. Bloch's motion to introduce the photographs in evidence was denied by the court on the ground that "we are not interested in seeing a lot of photographs of people that might have nothing to do with the case." The offer to introduce the

photographs appears clearly in the record, and it is understood that, in fact, the Rosenbergs had in their apartment a very large collection of such photographs. (1277-1280, 1285-1286, 1307-1309; for Mr. Saypol's summation, 1524.)

Schneider's shop was at 99 Park Row, about ten minutes' walk from Knickerbocker Village, and in the immediate neighborhood of the Federal Building, in Manhattan. Schneider kept no negatives and had no records to connect the Rosenbergs with the pictures which he said he had taken.

If Schneider's testimony refers to any event which in fact occurred, the event is quite as likely to have been an incident of a family expedition, such as the Rosenbergs described, as an incident in preparation for flight. It will have been noticed that the event may have occurred well before the arrest of Gold, toward the end of May, which according to the government's theory precipitated preparations for flight on the part of both the Greenglasses and the Rosenbergs. There is no evidence that the Rosenbergs ever applied for a passport. It is, in any event, unlikely that an experienced spy would have needed or used such conspicuous means of getting passport photographs for a projected escape.

Another line of evidence was introduced to show preparation for flight by Julius Rosenberg. His own testimony is that it was part of his effort, indeed his principal contribution, in aiding David Greenglass to prepare for flight (1119 ff.). Julius Rosenberg's explanation recalls first the occasion in the lens mold episode when, according to his testimony, Ruth Greenglass had asked him to come to her apartment; had then asked him to send her sister Dorothy Printz out of the room; and had then told Julius Rosenberg that she was worried because David Greenglass wrote that he was thinking of stealing "things" from the Army.

Julius Rosenberg explained that he found David Greenglass's panic in late May of 1950 understandable partly on the ground that he supposed that his stealing might be causing him trouble.

Julius Rosenberg testified also that he had been told by David Greenglass that he had been questioned in February of 1950 by the FBI about alleged thefts of uranium from Los Alamos. Later, on the final motion for a new trial, Bernard Greenglass was to make an affidavit that his brother David Greenglass had told him that he had, in fact, stolen uranium at Los Alamos and had thrown it into the East River, presumably because of some fear of detection.

Julius Rosenberg at any rate testified to his brother-in-law's panic in May of 1950. David Greenglass gave quite different testimony, to which we shall come shortly. For the present we need only observe that David Greenglass's account of the events of May 1950 was that Julius Rosenberg, upon hearing of Harry Gold's arrest, became very anxious to get David Greenglass out of the country.

One matter on which they both agree is that Julius Rosenberg inquired of his doctor about what vaccinations were required for a trip to Mexico. (Julius Rosenberg denied categorically that his questions had anything to do with Sobell's plans, a possibility touched upon only lightly in his cross-examination.) Julius Rosenberg's physician, Dr. George Bernhardt, testified to Julius Rosenberg's inquiry about the preparations necessary for going to Mexico. He also confirmed testimony by both Julius Rosenberg and David Greenglass that he was asked whether he would make a vaccination certificate for someone going to Mexico, if he had not vaccinated him, and he replied that he would not. He further confirmed Julius Rosenberg's testimony that Julius Rosenberg told him that he was inquiring for someone else.

There was a curious, but perhaps understandable, and apparently insignificant, divergence between the testimony of Julius Rosenberg and the testimony of Dr. Bernhardt. Dr. Bernhardt was, according to both of them, treating Julius Rosenberg for allergies and a "strep" throat in May of 1950. Dr. Bernhardt's recollection was that Julius Rosenberg had made his inquiries about Mexico over the telephone. Julius Rosenberg testified that he had taken the occasion of a simple conversation in Dr. Bernhardt's office about vacation plans to get in his question about the preparations which were needed for a trip to Mexico.

An appraisal of the testimony of David Greenglass as compared with that of Julius Rosenberg on this episode depends on the hearer's or reader's estimate of their credibility. The same comparison will be required in connection with the next episode.

Julius Rosenberg testified that in late May and in early June, up to the time of his arrest, David Greenglass urgently asked him for money. Greenglass said that he must have \$2000. Julius Rosenberg had made payments and undertaken commitments, in connection with the business, which left him without any money whatever to dispose of. Greenglass was, according to Julius Rosenberg's testimony, extremely angry, and told him that he would regret his failure to help.

David Greenglass testified, on the contrary, that during this period Julius Rosenberg was pressing money on him, and that they were making elaborate preparations for Greenglass's flight, first to Mexico and then to Europe. The preparations included elaborate recognition devices for use in getting in touch with Soviet agents, who would look out for Greenglass (523 ff.).

In the course of these preparations, according to David and Ruth Greenglass, Julius Rosenberg first gave them

\$1000 in bills. This sum David Greenglass gave to his wife, according to his testimony, and she used it in paying debts.

David Greenglass testified that while he pretended to prepare for flight, and had passport pictures taken of which he gave Julius Rosenberg sets, and of which a set was in evidence, he did not intend to leave the country. His wife was just back from the hospital after the birth of their second child.

The Greenglasses did, however, according to their testimony, accept an additional \$4000 in bills from Julius Rosenberg. They were in a brown paper envelope which was produced and identified at the trial. David Greenglass took the envelope to his brother-in-law Louis Abel (now the husband of Dorothy Printz), and told him to take care of the contents for him, but—somewhat oddly—to use the contents if he needed to. Louis Abel testified that he received the envelope, which he identified, from David Greenglass and that he hid it in a hassock in his apartment. He further testified that after David Greenglass's arrest, at his request, he gave the envelope to a representative of David Greenglass's lawyer, Mr. O. John Rogge. Helen Pagano, a secretary of Mr. Rogge, identified the envelope as one which Mr. Abel had brought to the office. Mr. Bloch had indeed already conceded that \$4000 was brought to Mr. Rogge by Mr. Abel in such an envelope.

Dorothy and Louis Abel, Helen Pagano, Evelyn Cox, Ben Schneider, and Dr. Bernhardt were the only witnesses who were not accomplices who were introduced to supplement testimony about particular actions of the Rosenbergs. (This list of non-accomplice witnesses excludes a witness introduced to testify about security regulations at Los Alamos; Dr. Koski, who testified about the lens molds; and Mr. Derry, who testified about the cross section. It also excludes a minor witness introduced to identify a picture of Yakovlev.)

Perhaps the best-authenticated single suspicious fact about David Greenglass that we have so far seen is his possession of the \$4000. This fact is, however, far from proving that Julius Rosenberg gave him the \$4000. This conclusion, if it is to be reached, must depend entirely upon the Greenglasses' testimony.

It would be easy to overestimate the corroboration which Louis Abel's testimony gives to the Greenglasses' story of the \$4000. There are many possible sources of money which should be remembered before one could consider the mere possession of \$4000 by the Greenglasses as evidence that they had received it from Julius Rosenberg. Among other things it would be necessary to remember that drafts and similar means for the unobtrusive transmission of funds are readily available all over the world, and such means could be used, for example, by some Russian agent who was outside the reach of the United States government, but who, for various imaginable reasons, may have wanted David Greenglass to have the means to escape, or to make his defense, in view of David Greenglass's experience. All one can say is that a certain lifelike character in the Greenglasses' testimony about their part in the lens mold episode, and Gold's testimony about his and the Greenglasses' part in the same episode, may lead us, before we are through, to conclude that this episode at least has some relation to some event which actually occurred. We shall be helped in coming to this conclusion, though even for this purpose we must consider various possible alternative sources of the money, by the circumstance that David Greenglass did have available for his lawyer's fee \$4000 in the brown envelope entrusted to Louis Abel.

If, however, as we have suggested, the Greenglasses had a strong motive and ready means for falsely implicating the Rosenbergs in their espionage, and if—as we have seen in

their testimony about the rewards and instruments—there are independent indications that the Greenglasses were able and disposed to give questionable testimony about the Rosenbergs, their testimony about the \$4000 adds nothing to confirm their testimony about the Rosenbergs' participation in the alleged events of atomic espionage. It is moreover in striking contrast to the poverty of the Rosenbergs themselves at the time of their arrest. There is no evidence that they ever had any such funds available in 1950 for their own flight or defense, or for any other purpose. There is no reliable evidence that either of them made a move to get out of the country, as David Greenglass testified that Julius Rosenberg advised him to do. We have already considered the scale of their household and Julius Rosenberg's business.

We need constantly to recall the dangers of accomplice testimony. There is the elaborate story of an actual crime, into which it is only necessary to insert another character, or pair of characters. There is the fear of death, and the concern for wife or husband and children. It is not necessary to suppose that in this case the Greenglasses anticipated a death sentence for the Rosenbergs. David Greenglass did indeed recognize on cross-examination that a death sentence was possible. But it seems not unlikely that many of the participants in the case were in fact unprepared for the death sentence.

Some other factors in David Greenglass's situation will be referred to later, when we come to take a general view of the case. For the present, it is enough to notice that the testimony about Julius Rosenberg's questions to his doctor and the testimony about the money supposed to have been given by Julius Rosenberg to the Greenglasses depend for their effect entirely on our confidence in the Greenglasses.

Communism—And a Note on the Fifth Amendment

ELIZABETH BENTLEY testified under direct examination by Mr. Saypol that she had gone with her friend Jacob Golos to the vicinity of Knickerbocker Village in the early fall of 1942. "Mr. Golos said that he had to stop by to pick some material up from a contact, an engineer." An objection that this was hearsay was sustained. During the subsequent colloquy of counsel, Mr. Saypol, in an answer to a question from the Court, spoke as follows: "She doesn't identify him except as 'Julius, an engineer,' who lived in the vicinity of Knickerbocker Village, whom she served to effect meetings with." Miss Bentley testified, on direct and cross-examination taken together, that she had received calls from someone calling himself Julius about half a dozen times between the autumn of 1942 and the autumn of 1943.

As the direct examination proceeded, Miss Bentley was asked whether she knew "what Julius's occupation was." She answered, "Yes." At this point, on the objection of Mr. Bloch, the Court set a limit to the scope of the examination. "I just think we have gone far enough with the subject and I think for the purposes of what the government intended to introduce, they have introduced it." The result, of course, as a practical matter, was that the

testimony was before the jury. On the other hand, Miss Bentley was saved cross-examination as to how she knew that Julius was an engineer, as Mr. Saypol said she did. This might have been an embarrassing opening in cross-examination, and it is doubtful on the record whether Miss Bentley would have come out very well.

So far as the contact in the vicinity of Knickerbocker Village is concerned, we have already seen that Knickerbocker Village was about a ten-minute walk from Park Row. Some very populous parts of Manhattan are in the vicinity of Knickerbocker Village.

The telephone calls from "Julius" seem at first sight more substantial. Nevertheless, we must recall that Gold testified to the great care which Russian espionage agents took about letting names be known within a circle of contacts. Miss Bentley herself said that she seldom used her own name. Occasionally she did use the name Elizabeth, but this was considered dangerous and she did it rarely. Whittaker Chambers in *Witness* indicates clearly that the practice so far as he could tell us about it was for Russian spies in the United States not to know any name beyond what was absolutely necessary for their business. While Mr. Chambers' testimony on some critical points is subject to doubt, there seems to be no reason to question his reports of practices in which he confessed to engaging, which did not affect the case against Hiss, and which correspond to the reports of others. As a result, it seems that the use of the word "Julius" in a telephone call indicates little or nothing about the source of the call. Some would even consider it evidence that the person who was making the call was not named Julius.

The events referred to by Miss Bentley go back to 1942 and 1943. The indictment charges a conspiracy beginning in 1944. It is worth noticing that the theory on which the

events were permitted to come into the record at all was that they explained the testimony of Elitcher to the effect that Sobell reported that Julius Rosenberg had said that he had "once talked to" Miss Bentley "on the phone." They were also held admissible as a means of confirming a bit of testimony by David Greenglass that Julius Rosenberg had said that "probably Bentley knew him."

Miss Bentley testified at some length to her experience as an espionage courier for Russia. Her testimony on these matters was held admissible on the ground that it showed the control which was exercised over Party members by the hierarchy of the Soviet Union. The Court of Appeals, in holding the testimony admissible, indicated clearly, however, that too much testimony of this sort would be prejudicial and would make all such testimony objectionable.

As we have already said in connection with the evidence of alleged flight, references to Communism permeate the entire record of the trial. We have referred to the cross-examination of Julius Rosenberg by Mr. Saypol, and the extended reference to friends, sometimes with insinuations or questions designed to bring out clearly that these friends were Communists. Not only on cross-examination but on direct examination the association of the defendants with Communists was again and again stressed. Elitcher and the Greenglasses testified to conversations in which the Rosenbergs spoke highly of the Soviet Union.

Three small items of object evidence, among the few such objects in the case, were used to indicate the same kind of political point of view. One was an insurance policy in the International Workers Order. One was a Communist Party local nominating petition signed by Ethel Rosenberg. The third was a Spanish Relief collection cup picked up in the Rosenbergs' apartment.

The critical student may wonder whether all these references to Communism tended to prove anything at all with respect to the issue of conspiracy to commit espionage which was formally the issue of the case. It may be doubted whether people who talk openly about their admiration for the Communist regime, and who indicate clearly in conversations their general political views, would be of great use in an espionage organization. Hiss, whether or not he was guilty, revealed no views favorable to Communism which he may have held. Fuchs and Allan Nunn May were above suspicion, until shortly before their confessions.

The Rosenbergs were permitted to claim a privilege not to answer questions about Communist Party membership. No inference was permitted from their refusal to answer these questions. It is not certain that any great advantage was gained by the claim of this privilege. Julius Rosenberg testified clearly about his political opinions. In any event, we must not come to conclusions ourselves with respect to the seriousness of any failure to testify in response to these questions.

A somewhat related question about inferences arises from Ethel Rosenberg's claim of privilege with respect to a great range of questions, including questions about elements of guilt, when she was questioned before the grand jury. Though comment on a claim of privilege is generally prohibited, a rather peculiar rule does permit comment and questioning on a claim of privilege at an earlier proceeding when a party waives his privilege by testifying at a later proceeding. This rule has been interpreted as permitting comment at the trial upon a witness's refusal to answer, on the grounds of privilege, before a grand jury. The result is to impair considerably the value of the privilege. This curious limitation of the privilege is a reminder, in the present state of controversy on the general subject,

of the legitimate value which a claim of privilege may have for a person who is doubtful about his innocence or about his legal position, or who is, in fact, innocent but wishes to save himself from being made a witness against himself. Ethel Rosenberg's claims of privilege before the grand jury were brought out and strongly emphasized on her cross-examination. They may have contributed to her conviction.

Whatever the significance of the Rosenbergs' claims of privilege, we are not left in doubt about the political views of Julius Rosenberg, at any rate. Moreover, the only legitimate purpose to be served by the constant references to Communist friends and Communist associations in examinations and cross-examinations was, in fact, served by Julius Rosenberg's frank statement about his own views (1078-1080). This statement came out in direct examination, partly in response to questions by the Court, and partly in response to questions by Mr. Emanuel Bloch.

Julius Rosenberg said:

I am not an expert on matters on different economic systems, but in my normal social intercourse with my friends we discussed matters like that. And I believe there are merits in both systems, I mean from what I have been able to read and ascertain. . . .

In the first place, I heartily approve our system of justice as performed in this country, Anglo Saxon jurisprudence. I am in favor, heartily in favor of our Constitution and Bill of Rights and I owe my allegiance to my country at all times. . . .

Q. Would you fight for this country—

A. Yes, I will.

Q. —if it were engaged in a war with any other country?

A. Yes, I will, and in discussing the merits of other forms of government, I discussed that with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet government had improved [the] lot of the underdog

there, has made a lot of progress in eliminating illiteracy, has done a lot of reconstruction work, and built up a lot of resources, and at the same time I felt that they contributed a major share in destroying the Hitler beast who killed six million of my co-religionists, and I feel emotional about that thing.

Q. Did you feel that way in 1945?

A. Yes, I felt that way in 1945.

Q. Do you feel that way today?

A. I still feel that way.

THE COURT: Did you approve the communistic system of Russia over the capitalistic system in this country?

THE WITNESS: I am not an expert on those things, your Honor, and I did not make any such direct statement.

Q. Did you ever make any comparisons in the sense that the Court has asked you about whether you preferred one system over another?

A. No, I did not. I would like to state that my personal opinions are that the people of every country should decide by themselves what kind of government they want. If the English want a King, it is their business. If the Russians want communism, it is their business. If the Americans want our form of government, it is our business. I feel that the majority of people should decide for themselves what kind of government they want.

Q. Do you believe in the overthrow of government by force and violence?

A. I do not.

Q. Do you believe—do you believe in anybody committing espionage against his own country?

A. I do not believe that.

The Critics

MR. STEPHEN LOVE of the Chicago bar was an early critic of the Rosenberg verdict. In an address at a public meeting in New York on May 3, 1953, he outlined his objections to the verdict, as well as his criticism of the sentence.

He elaborated particularly four or five sets of objections. For one thing he urged the objection to accomplice testimony that has been referred to from time to time in this essay. A related point, something of a lawyer's point, depended on his objection to what the government had done in naming Gold and Ruth Greenglass as well as the defendants as conspirators, and including the absent Yakovlev among the defendants. As a result, so he pointed out, the government was able to introduce evidence of conversations which would not otherwise have been admissible.

Perhaps Mr. Love's most emphatic criticisms related to the conduct of the trial judge. We have given some examples of the Judge's unfriendly interposition in the course of the trial. Mr. Love, an experienced trial lawyer, was particularly impressed by this feature of the case. The Court of Appeals took account of a number of objections on this score raised by counsel for the Rosenbergs, but decided that the instances were not serious enough to warrant a reversal of the convictions. The Court of Appeals was perhaps unduly impressed with the courtesies exchanged between counsel and court near the end of the proceedings

before Judge Kaufman. On the Rosenbergs' motion for a mistrial, at the end of the evidence, on the ground of the Judge's observations during the trial, Judge Kaufman showed marked displeasure to both Mr. Emanuel Bloch and his father. This circumstance may have led Mr. Bloch later to go further than he otherwise would have in exchanging courtesies with the Judge, who had still to pass sentence and in whose court Mr. Bloch might expect to continue to represent the Rosenbergs after sentence. In context, his expressions do not seem as significant as they perhaps appeared to the Court of Appeals.

Mr. Love was also particularly critical of the Court of Appeals in holding itself unable to consider the reliability of the witnesses. As we have outlined the record of the case, Mr. Love's criticisms on this point must seem very persuasive. Nevertheless, it must be remembered that a function of the jury for which it is particularly well fitted is to determine whether or not people whom its members watch are telling the truth.

Mr. Love also made objections to the plausibility of David Greenglass's testimony, on the ground that he does not appear to have been technically qualified to give most of the information which he reports that he gave. Mr. Love further doubted whether David Greenglass could have reproduced this information more than five years after he allegedly first gave it.

We cannot do better here than to quote the conclusion of Mr. Love's speech of May 3, 1953:

(1) There is grave doubt as to their guilt, as shown on the record.

(2) The Jury arrived at its verdict in the atmosphere engendered by the introduction of the evidence as to Communism, an insurmountable obstacle to the defense, in the present spirit of hysteria and fear;

(3) Their conviction was unquestionably due, in a large measure, to the attitude of the trial judge and his treatment of the defendants and their counsel, as contrasted with his attitude toward the witnesses and counsel for the government;

(4) When a jury, in this or any other case, sees the evident disfavor with which the trial judge—and a federal judge at that—looks upon the defense, the jury *inevitably*, understandably reacts in the same manner, no matter how many pious utterances or instructions come from the lips of that judge, directing the jury to disregard his attitude;

(5) The conviction is based almost entirely upon the testimony of self-confessed accomplices, two of whom, Mrs. Greenglass and Max Elitcher, were not even indicted and the third of whom, the creator of the atom bomb material if there was any such material—was let off with the reward of a fifteen-year sentence;

(6) The story of David Greenglass is so obviously false in so many material respects that he is entitled to no credence; a dog should not be put to death upon the strength of his testimony;

(7) The story of the accomplices was not corroborated in any material respect, by a single disinterested witness, nor by any documents, writings, papers, or physical evidence of the slightest materiality;

(8) No reviewing court, no one except the trial judge and the 12 jurors, has considered the reliability of the testimony or its sufficiency for conviction;

(9) The chief acts charged against the defendants are alleged to have occurred in 1944 and 1945, when we were an ally of Russia; had the defendants been tried then, rather than 6 years later, it is doubtful whether they would have been convicted; certainly death sentences would never have been imposed;

(10) The sentence was imposed by the trial judge in the light of his avowed belief that the conduct of the defendants had placed the A-bomb in the hands of the Russians years before Russia could perfect the bomb and in the light of his opinion that that had caused the Korean aggression; that his-

tronic statement hardly synchronizes with the statement of one of America's leading scientists, Dr. J. Robert Oppenheimer, that "there were not unpublished secrets concerning atomic weapons and no secret laws of nature available only to a few," or with the unequivocal statement of the Smyth Report, an official Report of the United States Government, as to Atomic Energy Development, published in 1945, that "the principles that have been used were well known to the international scientific world in 1940"; the trial judge was apparently not cognizant of the fact that the development of the atomic bomb was a matter of national resources and capacity rather than a matter of any so-called atomic secrets; his sentence was based upon a clear misapprehension;

(11) If Greenglass should recant his testimony, or the future more clearly establish its utter falsity, a terrible and irreparable injustice would have been done;

(12) The infliction of the death penalty for espionage, in a civil court, is utterly without precedent; it has never heretofore been inflicted by any civil court, in the history of the United States;

(13) The infliction of a death penalty upon the two defendants, one of whom is the mother of two small boys, is out of all proportion to the 10-year sentences imposed upon Axis Sally and Tokyo Rose, traitors directly serving our enemies in time of our war with them, and to the 5 to 15 year sentences imposed upon the four men who sold vital air force secrets to Germany in the fall of 1941;

(14) The leader of the atomic bomb conspiracy in which the defendants are charged with being links, the British scientist and Russian spy working directly at Los Alamos, Dr. Klaus Fuchs, was sentenced by a British court to fourteen years for overt acts much more serious than those charged against the defendants, and clearly proven; thus, a brilliant scientist will soon be released from prison although proven guilty of much more serious offenses than those for which an obscure and humble New York engineer and his wife are now sitting in a death cell.

An excellent analysis of the Rosenberg case was made by Mr. D. N. Pritt, a British lawyer experienced in arguing cases from all over the Commonwealth on records sent to him for that purpose. Like Mr. Love, Dr. Urey, and myself, Mr. Pritt did not have the advantage of seeing the witnesses. Nevertheless, his experience qualifies him particularly well to pass on the quality of a printed record in a criminal case.

Mr. Pritt's objections, set forth in a pamphlet, are particularly emphatic where he deals with the use of accomplice testimony. Not only does he have an excellent summary of the objections to accomplice testimony; he also urges the merit of the British practice which is to use accomplice testimony only after accomplices have been sentenced. One of the obvious temptations to the accomplice witness is thus removed: he cannot assure himself of lenient treatment so far as a sentence goes by giving testimony of a sort which will be welcome to the government.

Perhaps the most famous of the critics of the Rosenberg verdict is Dr. Harold C. Urey. We cannot do better here than reproduce the original letter which Dr. Urey sent to the *New York Times*, of which a shortened version was published in that paper on January 8, 1953.¹

To the Editor of the *New York Times*:

Mr. Walter Winchell has reported that I have urged commutation of the sentence of death imposed on Ethel and Julius Rosenberg. This is correct, and I should like the courtesy of your column to explain my reasons.

Before expressing any views on the case I have felt that it was necessary for me to read the testimony of the case, which I have done. I am assured that the trial was properly conducted

¹ See also Dr. Urey's introduction to this book.

in a legal sense and was competently reviewed by the Court of Appeals. I am not a lawyer, but can claim that my competence is comparable to that of the jurors.

After reading the testimony I find that I cannot put to rest my doubts about the verdict and wish to cite the following points:

(1) Max Elitcher's testimony is of doubtful value since he has committed perjury and was hoping that his testimony would help him. (It apparently did for he has not been brought to trial.) He says that he and Julius talked about espionage but never transferred any information for some five years. This doesn't seem probable to me.

(2) No certain conspiracy between Sobell and Rosenberg is established. Elitcher does not know that Sobell actually delivered secret documents to Rosenberg. Again Elitcher's testimony is of doubtful value. No other connection is suggested.

(3) The connections to others than Ruth and David Greenglass are not established. Miss Bentley was unable to identify the telephone voice that said, "This is Julius" with the voice of Julius Rosenberg. If "Julius" did not refer to him in this case it probably did not when Harry Gold said, "I come from Julius" when he met Greenglass in New Mexico. From Gold's testimony it seems that he knew nothing of Rosenberg at all. It seems unbelievable to me that the name of an arch conspirator would be used in such identification phrases.

(4) No contact between the Rosenbergs and Anatoli A. Yakovlev is established.

(5) The government's case rests on the testimony of Ruth and David Greenglass. He had pleaded guilty but had not been sentenced and hoped for clemency. She has never been charged and tried, obviously it seems as a reward for her testimony. A family feud between the Greenglasses and Rosenbergs existed because of a business altercation. The Rosenbergs' testimony flatly contradicted that of the Greenglasses. I found the Rosenbergs' testimony more believable than that of the Greenglasses, although I realize that I have not had the jurors' advantage of

hearing and seeing the witnesses. Is it customary for spies to be paid in wrist watches and console tables? Greenglass and Fuchs were paid in cash. The Rosenbergs appear to have been as poor as church-mice and the statement that Julius was spending \$50 or \$75 a night in night clubs seems to me to be a very doubtful one. Had he done this, he would have been obviously and unaccountably rich to all his associates.

(6) The Rosenbergs refused to answer questions on grounds of self incrimination whenever asked questions involving membership in the Communist Party or things of similar import. I can make a number of guesses as to the reason for this, but none of them makes me believe that they are guilty of the crime of which they are charged. I believe the Rosenbergs are or have been members of the Communist Party or very friendly to communist ideas. I regard such people as unreliable, but I do not believe in punishing people unless they commit crimes.

Even if the verdict is correct, I am amazed at the unequal punishment for the same crime. For the very same conspiracy, Ruth Greenglass was never brought to trial though she admitted her guilt on the witness stand; David Greenglass got 15 years; Morton Sobell and Harry Gold got 30 years; and Ethel and Julius Rosenberg got death. Only the last two took the witness stand and maintained their innocence. Some regard this as an unrepentant attitude. But if they are innocent what could we expect them to do? Apparently, they must admit guilt, implicate others, and then get a lesser sentence! This is something an innocent person could not do. If capital punishment is to be given in the future for espionage, I should like to have it introduced in a case for which the evidence rests on the testimony of witnesses who did not stand to profit from their testimony.

We are engaged in a cold war with the tyrannical government of the USSR. We wish to win approval and loyalty of the good people of the world. Would it not be embarrassing if, after the execution of the Rosenbergs, it could be shown that the United States had executed two innocent people and let a guilty one go

completely free? And remember, somewhere there is a representative of the USSR who knows what the facts are.

I strongly urge a careful reconsideration of this sentence.

Respectfully yours,

HAROLD C. UREY

Dr. Urey had his finger on the weak spot of the government's case. In particular his logical mind saw that the structure of proof was unconvincing. He did not say that David Greenglass was incapable of transmitting the information which he said he had transmitted, or of reproducing it some five years later. Dr. Urey's objection is rather to the logical form of the case as a whole. He has said in conversation that we lawyers work in a peculiar way. We do not pay as much attention as he thinks we should to alternative explanations of the events with which we are concerned.

In addition to this point, Dr. Urey makes his simple objection to the story of the Greenglasses, it seems to me, with very great force. Their account of the rewards and instruments, in particular, was just too much for his sober common sense.

Some Weaknesses in the Case as a Whole

WE HAVE confined ourselves for the most part to the case as it was made at the trial. At two important points we have looked ahead. We have considered the evidence about the table in the light of information which was made the basis of the motion for a new trial. We have also referred to the concession on an intervening motion that the photographer, Schneider, had been in court the day before he gave his testimony.

On the other hand, we have not considered all the evidence, even that which appeared at the original trial, which may seem significant to us later. We have not looked ahead to one document which will appear to be of the utmost importance when we come to consider the motion for a new trial. This is a pretrial statement by David Greenglass, made for his lawyer's use, which throws much light on the items of atomic espionage with which we have been primarily concerned. When we come to this document, we shall find that it throws light not only on the major episodes of atomic espionage, but on details which all bear on these episodes which we have deliberately omitted from our consideration thus far.

Some matters which might seem important to others we shall neglect entirely. We have not, for example, re-

ferred to testimony by David Greenglass that Julius Rosenberg talked with him about schooling, as reward and preparation for espionage. We have not referred to David Greenglass's observation that Julius Rosenberg had said at one time that he could get all the money he wanted for his business as a front for his espionage activities. There is no testimony in the case that he ever got money for this purpose.

Some matters which might be urged on the defendants' behalf have also been neglected. We have not dealt with Julius Rosenberg's account of his exceptional visit to a night club. We have not emphasized the quarrels between David Greenglass and Julius Rosenberg over their business. It is not easy to estimate the seriousness of these quarrels in the light of the testimony of either of them. They arose both with respect to management and with respect to the financing of the enterprise. At one point the brothers-in-law came to blows. On the other hand, according to the testimony of both of them they were in touch with each other in May of 1950 when the safety of David Greenglass, at any rate, seemed to be endangered.

As we have seen, Mr. Love has emphasized some objections to the trial while Dr. Urey has emphasized others. In fact, a trial record is a work of art of a singular kind. No essay, no general account of the record, can do it justice. Such an essay as this present one should be read, ideally, with the record at hand, for easy reference.

At this point, two general observations are in order. One relates to the quality of testimony given by the principal witnesses for the prosecution, the Greenglasses. The other relates to the general outline of the case against the Rosenbergs.

We have seen that accomplices, particularly unsentenced accomplices, have a peculiar temptation to save themselves

at the expense of someone else. We have seen also that, since they have participated in a crime, they have an account of a crime ready for use in their testimony. All they need to do in order to implicate an innocent person is change it in detail, or add a character here and there in the story.

In the case of David Greenglass, special problems of motivation appear. We have referred to his conflicts over business matters with Julius Rosenberg. We may notice also that he may have resented his sister's influence on himself. In one way or another David Greenglass had perhaps become a spy for Russia. His sister, and his brother-in-law Julius Rosenberg, elders to whom he looked up, had been known to him as people with an interest in and sympathy for the Russian regime. He may have felt that they contributed to his conduct in becoming a spy, no matter how irrational his feeling on the subject may in fact have been. He may have added a resentment on this score to his other resentments.

We must notice, too, that he was in a situation of singular difficulty when he was arrested. His wife, shortly after coming home from the hospital with their second child, suffered burns in their home, and returned almost at once to the hospital for treatment. When the FBI came, they found David Greenglass preparing formula for the child. We can understand the insecurity, and perhaps panic, which a father of two young children, caught in such a situation, may have felt.

David Greenglass was not well established professionally. His insecurity must have made him more open than he would otherwise have been to the opportunity which the representatives of the government may well have given him to improve his condition by furnishing information about other alleged spies.

We may look ahead to one matter which was to be brought out on the motion for a new trial. Ruth Greenglass made a statement for her lawyers, of which an authentic record appeared and was used by the defendants on their motion. Among other things, she said of her husband that "She had known him since she was ten years old. She said that he would say things were so even if they were not." She may, herself, have been afraid of what his testimony might do to her. Nevertheless, when one of the two principal witnesses for the government makes a statement of this sort about the other principal witness, her husband, it must give us pause. On the motion for a new trial it was suggested and urged that the remark, if given in testimony, would be admissible to impeach the reliability of her husband. It was also urged that the remark should have formed a basis for a psychiatric examination of David Greenglass, perhaps at the prison where he was confined. At the very least, it is some evidence that we are dealing here with a character whose early experiences have made him unreliable quite apart from the peculiar pressures to which he was subject at the time of his arrest and questioning by the FBI.

As we have pointed out, we do not need to suppose that David Greenglass was deliberately bringing his sister to her execution. He may not have anticipated a death sentence at all. Nor is it necessary to suppose that the FBI or other prosecuting officials conspired in any simple way to produce the testimony of the Greenglasses. All they needed to do, as the investigation went on, was to show zeal and interest in further testimony. We may have occasion, as we proceed, to doubt the dependability of the government's prosecuting officials; but our doubts about the Greenglasses do not, in the end, depend on our doubts about the government officials.

The Greenglasses furnished the serious testimony in the case. They testified to the first episode of espionage, in which David Greenglass is supposed to have furnished the names of scientists and information about the Los Alamos project for the use of Julius Rosenberg. They testified, each taking a different part, to the four subepisodes of the lens mold episode. Here they received some corroboration from their accomplice, Gold, but not any corroboration (except perhaps for the "Julius" phrase) with respect to the Rosenbergs' participation. David Greenglass testified, with some help from Ruth Greenglass, to the episode of the cross section of the atomic bomb itself. They testified also to the flight episodes, particularly the episode with respect to the money furnished David Greenglass for his, and perhaps his family's, escape after the arrest of Fuchs. They furnished also an explanation, alternative to that provided by Julius Rosenberg, for Julius Rosenberg's visit to his doctor, and his inquiry about preparations for going to Mexico.

The Greenglasses also gave the testimony about the rewards and instruments of espionage. This testimony can hardly fail to shake our confidence in their reliability. It may also affect our confidence in the dependability of prosecuting counsel. Particularly when viewed in the light of the evidence which later became available, and the treatment of this evidence by the prosecution, this line of testimony will disturb us. It bears the marks of fabrication, and fabrication on so systematic and elaborate a scale as to make one doubt the word of people who could create such a story.

The Greenglasses had, as we have seen, motives for fabrication. They had, on their testimony, an opportunity for fabrication in relating their experience with espionage, whatever it may have been. With motive and opportunity

goes indication that in fact they did fabricate their testimony about Julius Rosenberg's entertainments, about his citation, about the watches, and particularly about the table.

The Elitcher testimony and the Bentley testimony are inconclusive. In fact they tend, if anything, to discredit the prosecution.

The evidence from flight, apart at least from the Greenglasses' testimony, appears singularly inconclusive, if not discreditable. The Schneider episode at the least casts doubt on the good faith of the prosecution. The conviction of Sobell appears insupportable, and his association with the Rosenbergs in the case, and in part of the testimony, are further elements of weakness in the case against them.

As the Court of Appeals said, the case against the Rosenbergs depends in the end on the testimony of the Greenglasses. We have already seen reason to doubt their dependability. If further reason for doubt appears, we shall come to have further doubts about the verdict. As we have seen, the verdict and the sentence raise separate problems; but we shall remember that as our doubts about the verdict increase, so must our doubts about the sentence increase at the same time. Whatever uncertainty there may be about the conviction greatly increases the objection to the execution of the Rosenbergs.

The Three Motions

THE United States Supreme Court on November 17, 1952, made its final decision not to review the judgment of the Court of Appeals affirming the Rosenbergs' and Sobell's convictions. Counsel subsequently made three motions, the first raising objections to the conduct of the trial, and the other two raising objections to the sentence. These motions, all preceding the final motions for a new trial and for other relief (based on the newly available evidence, to which we referred in the opening chapter), deserve brief consideration here.

The first motion raised objections to the conduct of the trial. We have already seen that one of the objections was based on the statement of the photographer, Ben Schneider, that he had not seen the Rosenbergs between the time when he took the pictures and the time when he identified them in court. We have seen that the District Judge, in this instance Judge Ryan, thought that the misstatement was immaterial; and the Court of Appeals held that it was in fact hardly a misstatement, since this Court understood it to mean that the photographer had not seen them between the time when he took their picture and the time of the trial.

The disposition of this objection seems questionable. Identification, made spontaneously, after a considerable lapse of time, is more convincing than a prepared identification. It may be that this was not a sufficiently serious

matter to occasion a fresh examination of the case, but it was more serious than the Court seems to have recognized. In any event, it is an objection which remains and must be remembered along with later objections to the trial, for they are cumulative and not separate.

Another objection to the conduct of the trial was based on the treatment of a schoolmate of Julius Rosenberg from City College days. This was a man named William Perl, the only other schoolmate besides Elitcher whom the government could find who was expected to help its case. He disappointed the prosecution by testifying in grand jury hearings before the trial that he did not know Julius Rosenberg or Morton Sobell. He was prosecuted for perjury in his statement and the indictment was made public, while Ruth Greenglass was still testifying. Publication of the indictment was accompanied by a press release which was thus reported by the *New York Times* on March 15, 1951: "Mr. Saypol said also that Perl had been listed as a witness in the current espionage trial. His special role on the stand, Mr. Saypol added, was to corroborate certain statements made by David Greenglass and the latter's wife, who are key Government witnesses at the trial."

Perl was subsequently convicted on the ground that he did actually know Julius Rosenberg, although he may not have known him at all well. Anyone who has tried to describe his relations to fellow members of college organizations, or to college classmates with whom he was once acquainted, will appreciate the difficulty which Perl apparently was in. He testified that he thought he was being asked before the grand jury whether he then "knew" Julius Rosenberg or Morton Sobell, and that in fact he came gradually to recall them. In view of the form of the questions, he assumed that government representatives knew of their organization and class associations.

In any case, counsel for the Rosenbergs in their motion objected to the publication of the Perl indictment during the Rosenbergs' trial and the accompanying statement to the press by Mr. Saypol. In answer to the prosecution's point that defense counsel did not move for a mistrial at the time, Mr. Emanuel Bloch pointed out that they had depended on Mr. Saypol's assurance that the timing of the publication of the indictment and press release was not deliberately designed to affect the trial. Perl had not been tried when the motion was made and disposed of in the District Court and the Court of Appeals in November and December 1952, some nineteen months after the end of the Rosenbergs' trial. (Perl was in fact finally tried and convicted in May 1953; admissions with which he was charged at the time of the indictment were not introduced against him at the trial.) Mr. Bloch argued, with force, that the assurance from Mr. Saypol which had led Mr. Bloch and his father to proceed with the trial, without formal objection, appeared, in view of the later delay, to have been undependable. The District Court and the Court of Appeals nevertheless held that the absence of a formal motion for a mistrial was fatal to the defense. However, Judge Swan, for the Court of Appeals, did say that on the papers supporting the motion, in the absence of a hearing and an opportunity to examine witnesses, "we must . . . assume that publication of the indictment was deliberately 'timed' and the statement attributed to Mr. Saypol was made by him. Such assumed tactics cannot be too severely condemned."

Another significant feature of this same motion was a careful study of newspaper treatment of the Rosenberg case as a whole, preceding and during the trial. The study reinforced the objections, which have often been made at the time of great cases, to the newspaper treatment of

important criminal proceedings in the United States. The courts again found that the newspaper publicity was not sufficiently serious or unusual to require a reconsideration of the case.

The two motions with respect to the sentence were of a different sort. One was a technical motion, raising objections to the indictment, on the ground that it did not specify in so many words that the acts of conspiracy took place during wartime. The District Court and the Court of Appeals held, perhaps inevitably, that the indictment was sufficiently clear in indicating by implication that these acts did take place during wartime.

The other motion directed to the sentence was less technical. It renewed in a somewhat different form objections which had been made on the appeal from the conviction in the first instance. The objections were now based on an intervening decision of the Supreme Court, somewhat obscure in its implications, but suggesting doubts about the conduct of the Judge in taking into account factors which were not properly before him, in determining the sentence.

One objection was to the Judge's reference to treason. The Rosenbergs were not convicted of treason, and serious doubt still exists as to the limits on punishments which may constitutionally be imposed for political offenses not constituting treason. The Supreme Court on the original appeal had declined to consider the effect of the treason clause in the Constitution on the conviction, but the reference to treason in the Judge's remarks on the sentencing was now made an objection to the sentence itself.

A second objection to the sentence, among others, was based on the Judge's reference to a supposed but unproved intent of the alleged conspirators to injure the United States. This objection opened the way to a consideration

of the problems about the Atomic Energy Act which caused the Supreme Court concern in the last days of the case. The Act appeared on its face to limit somewhat the severity of the provisions applicable to atomic espionage in time of war. Thus for a death sentence, under the Atomic Energy Act, there had to be not only an intent to give an advantage to a foreign power, but an intent to injure the United States. The defendants' objections to the sentence opened the way to a consideration of the policy of the Atomic Energy Act, as one of their points on the appeal from the original conviction also related to the policy of that Act.

All these motions were decided adversely to the Rosenbergs. Applications for review of the adverse decisions were all before the Supreme Court, when the Rosenbergs' application for a review of the judgment affirming the judgment denying the motion for a new trial was presented to the Supreme Court in June of 1953.

10

Rewards and Instruments—New Evidence

THE motion which was argued on Monday, June 8, 1953, in the District Court in New York and apparently decided on Saturday, June 13, by the Supreme Court of the United States was the one in which I was personally most interested. It is the only motion in which I was immediately concerned as counsel.

I have already indicated my interest in part of the new material which was the basis of this motion. One question about the new evidence seems to call for further discussion.

The console table was important at the trial as a vivid item of testimony which may well have caught the jury's mind in the course of a long and sometimes tedious proceeding. It became, however, more important in another respect: it served as a test of the dependability of the Greenglasses' testimony.

The question which must have already occurred to the reader relates not to the nature of the new evidence or to its significance, but to its validity, its truth, its persuasiveness. If the newly discovered table was what the witnesses said it was, it was a table of a sort which was not uncommon in 1944. Macy's is a big store. Would it not have been possible for the defense to buy a Macy's table of the sort which Julius Rosenberg described at the trial and

substitute it for the original? If that were so, the question of the fate of the original would again become problematical. How do we know that this was the table?

I can only say, in the first place, that I saw the witnesses in this matter, and found them convincing. The witnesses who did testify in Mr. Emanuel Bloch's office to the identity of the table which was offered as a basis for a new trial were never examined in the presence of the Judge. He saw the two members of Julius Rosenberg's family—his sister, Ethel Goldberg, and his mother, the elder Mrs. Rosenberg—as suppliants for mercy. They were never examined as witnesses in his presence. At this point I have the advantage not only of having sat down at my leisure with the records of the case, but of having watched the witnesses giving their account.

They seemed to me trustworthy. Ethel Goldberg, it will be remembered, took the table with one or two other items when the rest of the furniture in the apartment was sold "for junk." She was terrified at the proceedings against her brother and his wife. She withdrew in a large measure from the case, so far as she emotionally could do so. She did not give up her allegiance or loyalty to her brother. She came to see the Rosenbergs during the trial. But she belonged to a middle-class family, wholly without experience in such matters. Her husband was a respectable businessman, very much troubled by what had occurred. She was ashamed as well as horrified. I saw her as Mr. Bloch questioned her about the subject of her affidavit, and saw how spontaneously and honestly she answered.

The same thing is true of the elder Mrs. Rosenberg. She speaks English and Yiddish, but reads nothing. She comes from a background of the International Ladies Garment Workers' Union. She was an old-timer in such union circles. She appears to be wholly without radical or

revolutionary interests. She is a respectable, devout old lady. I watched her in her conversations with Mr. Bloch and again found her as well as him entirely honest in their interchange on the subject of her affidavit. She could not read the newspapers during the trial, but came to see her son and his wife in prison. She knew nothing of the table until it was moved into her apartment at a time when she was trying to take care of the Rosenberg children.

I saw the brother, whose affidavit speaks indeed of seeing the table in his mother's apartment at a time somewhat after the end of the trial, but does not explicitly explain why he overlooked its significance. He was in the office, during my stay there, on two occasions. We would have had him clarify his affidavit, had he not been out of the city when the need for clarification appeared. We were prepared to have him clarify the affidavit, and to testify more clearly about his recognition of the table, in case a new trial was ordered. It appeared sufficiently, however, that he also had failed to see the significance of this table, which he had noticed when he came to his mother's apartment some time after the trial was over.

There was only one other member of the family. She was a sister whose illness kept her from participating in any way in the preparation of the motion for a new trial. It does not appear that she knew anything about the table at any stage of the proceedings.

Finally there is Mr. Emanuel Bloch. While he was close to his clients, Julius and Ethel Rosenberg, and their children, he was by no means so close to the other members of their family. Their horror of the case caused them to seek privacy. Mr. Bloch did not see them from the time when he advised them to close the Rosenbergs' apartment in October 1950 until after the trial had ended. I saw him when he searched his mind to recall when and how often

after the end of the trial and before the discovery of the table he was in the elder Mrs. Rosenberg's apartment. He remembered vividly only one visit, and thought there might have been one or two others. On the occasion which he remembered clearly he had gone with presents for the children, and with his mind on their affairs.

It may be observed that one of Mr. Bloch's principal cares and responsibilities was the problem of the children. The Rosenberg children were, as one would expect, deeply affected by the imprisonment, trial, and execution of their parents. Mr. Bloch saw to it that the parents had sound psychiatric advice at every point. After the elder Mrs. Rosenberg proved unable to take care of these lively children, he secured an excellent foster home for them, well out of the way of publicity, in a rural area not too remote from New York City. He took them to visit their parents, and in the end was appointed their guardian by their parents.

It is perfectly easy to understand, if one knew him, and saw something of the situation, how easily he could have been preoccupied with the children on these visits to the elder Mrs. Rosenberg. He said, and I saw him as he searched his mind on the subject, that he had no impression whatever of the table in the apartment. This seemed to me perfectly natural. He had been told that the table had been sold for junk, he had minimized its importance at the trial, and it no doubt was no longer on his mind.

The explanation for the delay in finding the table, which at first seemed so puzzling, is thus a simple one. The honest appearance and manner of the members of the family who had found it would, I believe, have convinced a jury of the truth of their statements.

On the motion, we asked the Judge to hear them, as a judge may do in a preliminary way on a motion for a new

trial. We also asked him to look at the table. He declined to do either.

On the motion for a new trial, the government cannot be said to have controverted the identity of the table. The government did indeed introduce two affidavits, bearing the date of the day of the argument in the District Court and introduced for the first time immediately before the beginning of the argument, which might appear to a casual reader to controvert the identity of the table. (On these affidavits, see the stenographer's minutes of proceedings on the motion C.134-245—especially pages 2-5, 53-54, 102ff., 120.) The principal point made by the two affidavits is that it was the custom of Macy's to mark such tables in crayon rather than in chalk. The affidavit submitted by the defendants on their motion, dealing with the markings on the table, as shown by the photographs, said nothing about the material used for the marking. The government's affidavits create the impression that the markings on the table were in chalk rather than in crayon. Mr. Bloch himself at first expressed a similar impression.

Our first request that the table, which could have been produced in fifteen minutes, should be brought into the court, was occasioned by the appearance of these affidavits. A question arose about the color of the marking. The government affidavits spoke of colored crayon. The custodian of the table, present in the courtroom, responded to Mr. Bloch's inquiry with the information that the markings were yellow. Mr. Bloch indicated clearly that he himself did not know what the color might be as between white and yellow, and that he was not certain what the materials used for marking were. He urged at this point that the table be brought into the courtroom so that all concerned could look at the markings.

The government counsel and the Judge alike, as two of

us present clearly remember, although the record is perhaps not quite clear on the matter, rejected the suggestion at once. We understood that the affidavits had, in effect, been withdrawn.

That the prosecution continues to make something of these affidavits is indicated in the reference to them in the recent book of Dr. Fineberg¹ and in their appearance in the proceedings involving Morton Sobell's motion for a new trial. Not only did the government cease to press the point made about the affidavits, and omit it entirely in argument in the District Court, but our interpretation of the record was confirmed by the fact that the District Judge in his opinion supporting his denial of a new trial made no reference to the government's affidavits. It is true, as will appear later, that he had already written his opinion *before* hearing the argument; but the mechanics of insertion were available to him, and he appears to have been disposed to call attention to any circumstances which might be thought to support the government's case.

Not only were the affidavits withdrawn, and not only were they disregarded by the District Judge. I have been informed, as I believe reliably, that the markings on the table are, in fact, in crayon. My own observation enables me to say that they were not made in anything which I would recognize as chalk; and I would simply say that they were made in a hard medium which I could not identify. If the presence of the government's affidavits on the markings in any way affected the result of the case, it is simply another indication of the effects which haste on the part of prosecutors and judges may have had in occasioning the execution of the Rosenbergs. The circumstance that so much weight is put on these affidavits in Dr. Fineberg's book can only occasion misgivings in the mind of a student of the case.

¹ See above, Chapter 1, note, p. 2.

Dr. Fineberg refers also to one point made in one of the two affidavits produced by the government, in a way to exaggerate its significance for the unwary reader. The defendants' affidavit with respect to the markings was made by Mr. Joseph Fontana, an employee of Macy's. He described the markings in detail, and identified them as characteristic of a type of table sold at Macy's in the year 1944. He called attention, indeed, to an uncertainty whether one letter was an "E" or "F," and resolved his doubts in favor of the "E" which was consistent with the three other significant code markings used. (The letter on the table appears quite clearly to be an "E," though the photograph is unclear.) With reference to the specification of price, his affidavit said: "'1997' is Macy's retail selling price of \$19.97." He made one of the two affidavits submitted by the government with respect to Macy's custom of using crayon for marking tables. Another Macy employee, Francis Fitzgerald, made a similar affidavit about Macy's use of crayon. At the end of this affidavit, he added a paragraph:

To the best of my recollection, during the period from 1940 to 1949, it was also the custom and practice of Macy's to code the retail prices in the markings put on occasional furniture, including console tables. The coding was simply putting the numeral "2" in place of a decimal point. An example of this would be retail price of \$19.97 would be coded as "192972."

The discussion at the beginning of the argument on the motion for the new trial which led to the Court's decision regarding the affidavits was concerned entirely with the question of the material used for marking the table. The form of the price-mark was not mentioned. The rest of the evidence about the table is so clear, and the uncertainty about the significance of the price-mark so great, that it seems doubtful whether it would be worth while to pur-

sue the sort of investigation which would be necessary to get at the facts about Macy's practice with respect to coding price-marks in 1944. The affidavit itself is not positive in its assertion. The affiant, Mr. Fitzgerald, does not fully describe his position in Macy's in 1944. The chances of departure from a practice, if it were established, may have been very considerable. It seems doubtful whether anything but the exigencies of a pending case would justify the sort of expense for Macy's which would be necessary for a thorough investigation of the practice, and the chances for departure from the practice, in the sale of console tables in 1944.

It is to be observed that the other code markings on the table are not in any question at all, apart from the possible question as to whether one letter is an "F" or an "E." These markings were described by Mr. Fontana in the affidavit submitted by the defendants on their motion for a new trial as follows:

The table would appear to have been manufactured by the Brandt Manufacturing Company and the markings "N N 4046-760-F4-1997" on the under side of the table would indicate the following information:

"N N" means Macy's occasional furniture department.

"4046" is the pattern number assigned by Brandt Manufacturing Company to this style in the year 1940.

"760" means the Brandt Manufacturing Company Cabinet Works of Hagerstown, Md.

"F4" is a symbol of a Macy season; "F4" was last used as a symbol in the fall season of 1936; however, "E4" was last used as a symbol in the early part of 1944. A view of photographs "E" and "F," which are closeups, show that the seasonal symbol could be read as either "F4" or "E4." The use of "E4" would be consistent with the manufacturer's pattern number.

"1997" is Macy's retail selling price of \$19.97.

Ruth Greenglass was in New York and David Greenglass in the Federal penitentiary in Lewisburg, Pennsylvania. Neither had testified at great length at the trial about the table. Either might have been shown the table, and either might have amplified the testimony given at the trial in various ways. Nevertheless the government produced no affidavit from either of them.

Moreover, as we have observed, Evelyn Cox, one of the few non-accomplice witnesses produced by the government, who had thought she recognized the picture at the trial, now recognized the newly available console table as like the one which was there when she had worked for the Rosenbergs in 1944 and 1945. Her testimony at the trial was indeed not of any great value, if one looked at it carefully. Nevertheless it had its appeal, so far as one can judge from the record; and, on an issue in which the evidence was generally so questionable, her evidence must at any rate have been of some help.

We are warranted, it seems, on the record of the case as a whole, including the record of the motion for the new trial, in inferring that the table produced on the motion for the new trial was in fact the only console table which ever stood in the Rosenbergs' apartment.² It is not a special table nor is it hollowed out for purposes of microfilming. It is not an \$85 table, and was not in 1944. It is a table of a sort which was sold at Macy's in 1944 for \$20.36, including sales tax. This comes close to the figure of "about \$21" which Julius Rosenberg said he had paid for their console table.

The result is that the dependability of the Rosenbergs' testimony is in this respect vindicated. If the jury thought that they were lying about the console table, that can no

² See also above, Chapter 1, pp. 11-13.

longer be taken as a finding with any support in the evidence. They were telling the truth.

On the other hand, the Greenglasses, on the record as we have it, must be treated as having told a falsehood. The table they described was never there.

We have seen how much the conviction of the Rosenbergs depends on the word of the Greenglasses. If they were ready to engage in such a systematic fabrication in order to secure the conviction of the Rosenbergs, we must look on their entire line of testimony as doubtful.

We must, it seems clear, disbelieve it. We must conclude, even if we cannot say that the Rosenbergs were innocent, that they were, at any rate, not proved guilty, certainly not beyond a reasonable doubt. And we must certainly be profoundly dissatisfied with the judgment denying them a chance to prove their innocence on a new trial.

Atomic Espionage—New Evidence

BESIDES the table, the other most significant feature of our motion for a new trial was, in my estimation, a pretrial statement in the writing of David Greenglass and given to his lawyer.¹ This was taken from his lawyer's file and photostated, the photostat sent to France, and returned from France to America to the hands of Mr. Emanuel Bloch. I do not know how the original disappeared from the files, or in what circumstances the photostats were made and transmitted. In any event there can be little question about the genuineness of the memorandum, since David Greenglass's attorney, Mr. O. John Rogge, from whose files it came, claimed that the original was genuine, and insisted on the return of Mr. Bloch's photostat to him. More recently he has publicly made a similar statement. There can be no question about the admissibility of this pretrial statement in evidence, so far as its source is concerned. Moreover, Mr. Bloch secured an opinion from the Committee on Legal Ethics of the Association of the Bar of the City of New York, upholding his right to use available reproductions other than the one returned to Mr. Rogge.

The statement is, as Mr. Rogge has recognized and as a witness was prepared to testify, in the handwriting of David Greenglass, and it is on three sheets of paper, ending

¹ The statement is given in Appendix 2.

at the middle of the third. It therefore appears to be complete.

The statement is notable both for what it includes and for what it excludes. Its omissions would perhaps not be so significant, were it not for the two striking admissions to which we shall first give our attention.

I stated that I met Gold in N. M. at 209 Hick St., my place. They told me that I had told him to come back later because I didn't have it ready. I didn't remember this but I allowed it in the statement.

David Greenglass is recounting for his lawyer what he told the FBI at their first interview. He is here saying, if I understand it correctly, that he permitted the FBI to put into his statement a false account of his recollection of his dramatic meeting with Gold in New Mexico. He testified to the same false account at the trial, and his wife and Gold also testified to the same effect. At first sight the point may seem a minor one. Nevertheless the difference between Gold's stopping casually on the way back from a serious visit to Fuchs in Santa Fe for some material which Greenglass in Albuquerque would have ready for him, and coming in the morning with signals and preliminary conversation followed by a wait for the completed report, is indeed dramatic. Had the simpler version been given in court, it might have made a difference. It is not easy to believe that David Greenglass was able to remember the details of his drawings of lens mold and cross section for over five years; but it is harder to suppose that he could have forgotten the course of events on this climactic day when Gold came to get the lens mold information from him.

It is not said in so many words that David Greenglass told the FBI that he did not remember the sequence as

they gave it to him. Perhaps they had already received an account of the day from Gold. Perhaps they carelessly fell into this different account of the sequence themselves. It seems, however, a fair inference that they knew what he was doing and that they had already begun to encourage him to embroider his story, make it more dramatic, and put himself more nearly in a class with Fuchs as a spy.

The sentences just quoted are at the very beginning of the pretrial statement. At the end occurs another indirect reference to Gold's visit to New Mexico. "But this I'll tell you, I can honestly say the information I gave Gold may be not at all what I said in the statement." David Greenglass is saying that he can honestly tell his lawyer that he may not have been honestly recounting events for the FBI.

The pretrial statement has no reference whatever to the cross-section sketch of the atomic bomb. It is a striking omission on this last occasion when David Greenglass was to speak while relatively free from the influences which must have played on him during his eight months of intervening imprisonment. We recall that there was no reference to the episode of the cross section of the bomb in any of the indictments, including the final one of January 31, 1951.

During those eight months of imprisonment, if we can judge by the experience of the Rosenbergs, the FBI and perhaps other government officials as well were eager to have Greenglass tell them more about the espionage in which he was engaged and about his co-conspirators. The FBI had on the whole a poor record in apprehending either German or Russian spies. Allan Nunn May and Klaus Fuchs had eluded them. They were perhaps pardonably eager to make their contribution by way of a big case. This must have been apparent to prisoners with whom they

dealt. Gold was available for consultation by the FBI, and his testimony and the Greenglasses' must have been coordinated. Gold was a much better educated and more capable man than was David Greenglass. We can only guess at the influence which he may have had on the organization of the case. In any event, since David Greenglass was not, according to his own statement, being scrupulous with the FBI in what he told them, we may legitimately doubt some of the rest of his story, including that part of it having to do with the cross-section sketch of the atom bomb.

The pretrial statement has in it a reference to the events of 1944. David Greenglass says that he told the FBI that his wife had asked him then about sending out information, and that she had done it because Julius Rosenberg had asked her to. Here is the item corresponding most closely to what was shown at the trial, according to the Greenglasses' testimony. At the same time it is a simple item which could easily have been suggested by FBI questions, and developed from recollections of general conversations with the Rosenbergs. Moreover the doubts which the pretrial statement has helped to develop must lead us to recall that at the trial, in cross-examination, it appeared that Ruth Greenglass had memorized her testimony with respect to this episode. Here we may observe that when the jury asked for Ruth Greenglass's testimony on this episode, while they were deliberating, the Judge, over Mr. Alexander Bloch's objection, sent in only the testimony on direct examination, and not the cross-examination in which Mr. Bloch brought out the repetition of phrases which seemed to be the mark of memorization by Ruth Greenglass. The jury's request came not long after Mr. Emanuel Bloch had emphasized the cross-examination, in his sum-

mation, and there can be no doubt that the jury, though it made no further request, was interested in seeing the record of the cross-examination. As we observed before: memorized testimony may be true, but it has a way of creating doubt.

In dealing with the lens mold episode, David Greenglass's pretrial statement is entirely silent about the important subepisode in which he allegedly gave the first lens mold sketches to Julius Rosenberg in January of 1945. Here again is a matter which we did not mention when we were describing the trial, but which should now be noted. In the examinations of the Greenglasses and Julius Rosenberg it appeared that Julius Rosenberg could not have stopped on the two mornings in succession at David Greenglass's house on his way to work, on any normal schedule, and arrived at his place of employment anywhere near on time. He was working for the Signal Corps, and Mr. Emanuel Bloch in his summation observed with some force that the government might well have produced evidence from the Signal Corps' records that Julius Rosenberg was absent from work or late to work on those days.

It is also significant that the final superseding indictment, like its two predecessors, places this subepisode after the meeting with "the Russian" and just before David Greenglass's return to New Mexico, instead of at the start of the lens mold story, as David Greenglass told it at the trial. What happened to this part of the testimony after the time of the pretrial statement?

The omission from that statement of any reference to this first subepisode in the lens mold sequence is significant on its own account. The preparation and transmission of the first sketches were an important item. They comprised the first step toward the alleged elaborate espionage which

concerned itself with the lens mold. The lens mold episode as a whole, of all the episodes described, was the one that bore the strongest mark of reality. As we have seen, it may have had reference to something which actually occurred. The question here is as to the Rosenbergs' connection with it. If Julius Rosenberg did in fact play a part in this first step, when the drawings were first exhibited, it is hard to suppose that his name would have been omitted from a statement such as David Greenglass's original statement to the FBI. It is also hard to suppose that David Greenglass would have omitted from his first statement to his lawyer any reference to this subepisode.

It is true of course that witnesses remember stories bit by bit. On the motion for a new trial, Judge Kaufman said that some of the other omissions in David Greenglass's pretrial statement, including the omission of any reference to "the bomb itself," were consistent with the familiar experience that "details," as he called them, are filled in by a witness in a gradual sequence of statements. But it is hard, especially on Judge Kaufman's view of the awesome nature of the sketches, to treat the omission of the cross section of the bomb as the omission of a "detail." So too the omission of this first step and these first sketches in the lens mold sequence is hard to reconcile with a theory of forgotten or overlooked details. This was the beginning of elaborate espionage for David Greenglass, and certainly of considerably more importance than the talk with the mysterious "Russian."

As to "the Russian," David Greenglass had this to say in his pretrial statement:

I then mentioned a meeting with a man who I didn't know, arranged by Julius. I established the approximate meeting place but no exact date. The place was a car, an Olds owned by my

father-in-law, at somewhere above 42nd St. on 1st Ave. in Manhattan. I talked to the man but I could recall very little about which we spoke. I thought it might be that he wanted me to think about finding out about H. E. lenses used in experimental tests to determine data on the A bomb.

On the day before the date of the memorandum which we are here considering, David Greenglass had an interview with Mr. Herbert J. Fabricant, from Mr. Rogge's office, which is the subject of a memorandum by Mr. Fabricant, included among the papers from Mr. Rogge's office of which the identity has been conceded by Mr. Rogge. Mr. Fabricant's memorandum reports that David Greenglass spoke of such a meeting and added that David Greenglass "does not know if the man was a Russian and told the FBI that he didn't know."²

By the time of the trial, David Greenglass had become much more certain about the subject of his conversation with this mysterious character. He testified in effect that the man was a "Russian." He testified also that the man asked him about the dimensions of the lenses, as we may recall, and that he was unable to tell him about these dimensions.

Since there are references to this meeting in David Greenglass's pretrial statement, in Mr. Fabricant's memorandum, and in the trial testimony alike, one might think that it is better established than any other event connected with Julius Rosenberg, and that it at least corresponds to something or other that was real. It is, however, a simple item, corresponding to items about "Russians" of which the Canadian spy reports are full and one which could easily be suggested by FBI questions. More serious perhaps, it differs so in its pretrial and trial versions that one can see no reason to believe any part of either.

² The memorandum is given in Appendix 1.

David Greenglass said this about the Jello box: "One more thing, I identified Gold by a torn or cut piece of card, but I didn't tell them where or how I got it." (In the next sentence we are given a further clue to a motive that may have been working in David Greenglass's mind: "Also, I definitely placed my wife out of the room at the time of Gold's visit.") Then Greenglass adds: "Also, I didn't know who sent Gold to me." (Consider the relationship between this statement and his own testimony at the trial to Gold's identification phrase in the form "Julius sent me.")

Questions which may have troubled us before become more insistent. Why was David Greenglass an important member of the party, if the Jello box half was to go to his wife? On direct examination, he once said that one half was for him, then said that it was for his wife. In addition, he said that after they went home, his wife showed him the one half, and put it in her wallet. The next day, on cross-examination, he said the half was for his wife. Why were these preparations made two months before Ruth Greenglass returned to New Mexico, six months before the meeting with Gold? She testified that in February she talked with Julius Rosenberg about final arrangements. Julius Rosenberg testified that she talked with him about quite other things. With whom else did she talk? Who really made the witty remark: "The simplest things are always clever"?

In the two months between the Jello box episode and her arrival in Albuquerque, Ruth Greenglass could have been given her half of the Jello box side by a considerable number of people. There was Yakovlev, there were fellow workers, there were other unknown members of the kind of espionage ring which Greenglass described. There may have been, among these groups, a source of the \$5000 given to David Greenglass in 1950, someone who, whether be-

cause he was beyond the reach of the United States government or for some other reason, was not named by the Greenglasses.

At the supposed evening gathering at the Rosenbergs', there was planning for a meeting at the Safeway store, where Ruth Greenglass was to have the information (the nature of which was never told). Ruth Greenglass described a later meeting with Julius Rosenberg where weeks were fixed (perhaps Saturdays as well), and correspondence to fix postponed dates, more precisely, for that somewhat unlikely Saturday afternoon meeting before a Safeway store. Gold, on the record, came at a time not arranged with the Greenglasses; so far as they were concerned, he happened in. He found them away from home in the evening, he testified, but at home the next morning, Sunday, June third. He "finally managed to obtain a room in the hallway of a rooming house" for the intervening night, and in the morning "registered at the Hotel Hilton." The arrangements for meetings at the Safeway store were in each case for meetings at which Ruth Greenglass would have information ready (on paper, judging from the first discarded plans about Denver) for the expected intermediary. Ruth Greenglass testified that she waited at the Safeway store (once with her husband), in accordance with these arrangements, the third and fourth Saturday afternoons in May, the latter a week before Gold's visit. It was evidently not planned that there should be any opportunity or any occasion for David Greenglass to write things up. If new technical developments during the week, or the precautionary destruction of his wife's papers, for example, made a new report necessary, it would have been interesting, simple and natural to say so.

There seem to be traces here of four or five stories. There is the story of the evening at the Rosenbergs' apartment in

New York. There is a story of plans, and postponed plans, for a meeting at which Ruth Greenglass would have information ready for an intermediary. This story fills in the time between January and June, and that may be its only meaning or function. There is probably a lost story, as interesting as any, about arrangements for Gold's call at the Greenglasses' apartment in Albuquerque. It seems unlikely that his superiors, who through Yakovlev insisted so strongly on this side trip, would have sent him on the chance of finding one of the Greenglasses there at a particular time, an evening or morning or both of a particular week end. If, as it turned out, he had to see David Greenglass, the chance of missing the object of his trip was greater and arrangements the more necessary. Whenever these arrangements were made, other arrangements—for example, the Jello box arrangements—could have been made at the same time. They could all have been made, for example, with alternative possibilities, before Ruth Greenglass left New York. Why has an almost necessary story about arrangements for Gold's call dropped out of the total account? Was too much involved in those arrangements?

Then there is David Greenglass's nearly lost story of the day of Gold's visit in Albuquerque, the story implied in his pretrial statement, ending with a simple call by Gold, and omitting the preparation of sketches and notes and the return of Gold to get them. This story perhaps belongs with the wholly lost story of the arrangements for Gold's call. It fits also with the story of arrangements for Ruth Greenglass to wait somewhere (whether or not before the Safeway store) with information ready for an intermediary, and the postponement of these arrangements, which may have been supplemented originally or superseded later by the arrangements for Gold's call. This group of stories is inconsistent with the story told at the trial by the Greenglasses

and Gold about the circumstances and events of Gold's call on the Greenglasses in Albuquerque.

Finally, there is the total story about the Jello box and Gold's call in Albuquerque, which by itself turns out on examination to be remarkably incoherent, told by the Greenglasses and—in part—by Gold, at the trial. Whatever the processes of recall, self-examination, and coordination which may have gone into developing this story, it seems to suggest an imperfect combination of accounts of at least two sets of experiences, one with the Rosenbergs and one with Gold. The care with which they were put together may have been sufficient to make the combination effective for a jury. A careful reader, however, disturbed by doubts arising from the evidence about the console table and from David Greenglass's pretrial statement, may well conclude that the Greenglasses and Gold seem to have pieced together two quite separate accounts of two sets of experiences, neither account having any clear relation to any actual events, in organizing their story of the sequence of events from the cutting of the Jello box to Gold's visit in Albuquerque. Motivation for the particular form which each item of testimony took may be absent. The traces of fabrication left in the record may be due simply to lack of care or skill on the part of witnesses or government representatives or both. The motives for the fabrication as a whole are clear enough.

Yakovlev had left the country. The Greenglasses may well have thought that an account of participation by people available for investigation and prosecution would satisfy the FBI's zealous wishes better than an account of their activities ending with Yakovlev. Julius Rosenberg's conversations in 1944, including conversations with Ruth Greenglass reported to her husband, may have gone far in expression of sympathy for and admiration of the Russians,

and the feeling that scientific secrets should be shared with them. There were grudges against the Rosenbergs, and sources of hostility in reaction to earlier hero worship.

The FBI found a student notebook belonging to Julius Rosenberg in David Greenglass's apartment when they arrested him. It is not impossible that Gold's identification phrase about "Julius," if he in fact used such a phrase, suggested the implication of the Rosenbergs. The Greenglasses had a series of personal relationships with the Rosenbergs which could rather easily be combined with the lens mold story, and the other stories of espionage, in a somewhat complex and convincing way. We have no reason to think that experiences with anyone else would have fitted in as well.

It is not hard to see why the Rosenbergs were chosen, especially if a death sentence was not expected, once the temptations of confessed accomplices led the Greenglasses to use their opportunities to substitute someone else for themselves as the principal objects of the prosecution. They did not need to think it all out at once, or see it all at once. They (and Gold) had eight months between David Greenglass's arrest and the trial to recall different sets of events, and correlate their testimony.

If we consider the possibility that Ruth Greenglass, some time before she left for Albuquerque, got her half of the Jello box side from Yakovlev or someone working closely with him, we may conclude that it would explain more of the known facts than any other possibility. It would explain the omissions, vacillations, inconsistencies, and apparent fabrications in the Greenglasses' total known account of the lens mold episode. It would explain a memorized statement about the first transmission of information about the project and the late appearance of the episode of "the bomb itself." It would explain a disposition to fabricate and im-

prove other parts of the story, particularly the parts dealing with the supposed rewards and instruments of espionage. It would explain a certain complexity and verisimilitude in the Greenglasses' account, and Gold's, of the identification arrangements for their meeting, together with their testimony, and Gold's, that he did meet them. It would explain the provision of funds for David Greenglass in 1950, by draft or otherwise. It would explain the Rosenbergs' steadfast assertion of their innocence, at both the trial and their execution.

The more I reflect on the entire record, the more it seems to me that the record alone, as Dr. Urey thought even before the new evidence came to our knowledge, is more consistent with the view that Ruth Greenglass got her half of the Jello box side from Yakovlev himself, than with the view that the Rosenbergs had any part in the lens mold episode, or any other episode of espionage whatsoever.

David Greenglass has told us at any rate that the report of the day in Albuquerque when Gold came to see him and his wife and secured the critical information about the lenses and the lens molds is not consistent, as it was given first to the FBI and later at the trial, with his first recollection of that dramatic day. He can hardly at any time have forgotten the main outlines of the sequence of events as they then occurred. If Gold and Ruth Greenglass and David Greenglass have for any reason fabricated the account of this day which they gave at the trial, we cannot believe anything that any of them says.

Some Details—New Evidence

WE have emphasized particularly certain features of the evidence offered on the motion for a new trial, which seem to discredit the Greenglasses and perhaps the prosecution as well. As in our outline of the trial, we have omitted some matters which might seem particularly important to others.

Mr. Emanuel Bloch, partly no doubt because he had been faced with denials in his cross-examination of the Greenglasses, was particularly impressed by one feature of the memorandum of Ruth Greenglass's conference with her lawyer some four days after David Greenglass's arrest.¹ In this she said, contrary to the implications of her testimony at the trial, that the FBI had investigated the Greenglasses, before his arrest, inquiring about a supposed theft of uranium by David Greenglass from Los Alamos.

As we have seen, Bernard Greenglass, David Greenglass's brother, made an affidavit with respect to the supposed uranium theft by David Greenglass, which was used on the motion for a new trial. Bernard Greenglass said that his brother had told him that he had in fact stolen uranium and thrown it into the East River, presumably in fear that he was likely to be caught with it. If David Greenglass did, in fact, steal uranium, particularly if he later sold it instead of throwing it into the river, this

¹ See pp. 81, 103.

would explain a number of puzzling facts in the case, perhaps including the \$4000 acquired by Greenglass in 1950. Scientists familiar with the project apparently consider it unlikely that any such theft took place. Whether or not the theft did take place, the fact that David Greenglass had recounted it and that Ruth Greenglass first said they *were* asked about such a theft, and the further fact that at the trial they denied that they were asked about it, have considerable significance. The incident casts further doubt on their dependability. Moreover it substantiates Julius Rosenberg, in that if this investigation was made, or if the Greenglasses or either of them said it was made, it is not unlikely that David Greenglass told him something like what Julius Rosenberg testified to at the trial. If David Greenglass told him, in any form of words, that he was afraid of proceedings on account of uranium or other thefts, this would explain Julius Rosenberg's readiness to help David Greenglass in an attempt to escape from the country. It would of course not justify Julius Rosenberg, strictly, in taking steps to help his brother-in-law escape. It would, however, be understandable as an expression of clannishness not inconsistent with quarrels and hostilities between the two, and something very different from the participation in an espionage conspiracy of which he was convicted and for which he was sentenced.

We have already quoted the lawyer's memorandum about Ruth Greenglass's first conference with respect to Ruth Greenglass's remarks about her husband's credibility.² "She had known him since she was ten years old. She said that he would say things were so even if they were not." The memorandum contains a record of other references by Ruth Greenglass to the peculiarities of her husband's behavior. Some have seen an inconsistency between her

² See pp. 103, 134.

testimony at the trial about her knowledge of espionage activity and a remark attributed to her about the effect which the Hiroshima bombing had upon her mind. "She would not have allowed her husband to bring anything home after hearing what the project was. She intended to raise a family and did not want that kind of material around."

A pair of memoranda from the Greenglasses' lawyer's office was submitted on the motion for a new trial to show clearly that the discussion of a "deal" for the Greenglasses was carried out by their lawyer and government counsel. The memoranda suggest at any rate that David Greenglass was led at one point to expect or at least hope for even more lenient treatment than he received. On the motion for a new trial, the government introduced two affidavits by the Greenglasses' lawyers which did not in any way controvert the authenticity of these memoranda, but did argue their effect. We need not make too much of the memoranda. They did, at any rate, confirm the impression which experienced lawyers would evidently derive from the proceedings as a whole, the impression that the testimony given by Ruth Greenglass and David Greenglass had something to do with the lenient treatment which they received in the case.

However one views the entire record of the proceedings, including the trial and the motion for a new trial, the Greenglasses appear to be discredited. It is possible that they were not lying in their testimony about the major episodes of espionage. The possibility appears, however, somewhat remote. They had a motive to lie. They had the material for a convincing lie in their participation in some sort of espionage. They showed a disposition to lie, particularly in their treatment of the rewards and instruments of

espionage. David Greenglass's pretrial memorandum indicates clearly enough that he had lied about one at least of the major episodes of atomic espionage.

The testimony of other witnesses, Elitcher, Schneider, Elizabeth Bentley, is not such on the record as to help the government in its case. It appears indeed, if carefully read and thoughtfully considered, to cast doubt on the government's case.

David Greenglass's pretrial statement, while it indicates that he permitted the FBI to put words in his mouth, words which he repeated at the trial, does not conclusively establish that the FBI representatives knew what they were doing. They may, for example, have gotten the story about that critical day from Gold, and used it as the basis of a memorandum which David Greenglass signed, and later followed in testifying about the sequence of events. It may be that Gold, David Greenglass, and Ruth Greenglass were simply given opportunities to correlate their testimony about that day in Albuquerque. At the very least, however, it seems not unlikely that the FBI's techniques encouraged the development of the Greenglasses' story.

The use made of the Greenglasses' testimony about the rewards and instruments of espionage affects more directly our confidence in the prosecuting counsel. Taken together with their use of the Elitcher, Schneider, and Bentley testimony, the creation of such a sequence as the console table story, in a capital case of public significance, is inexcusable. In my own view it was the most clearly reckless conduct in a sequence of events which led to an unjustified use of the United States' power to take its citizens' lives.

Accomplice Testimony

AT DIFFERENT times different methods have been used to convict those charged with the worst crimes against society. The methods of the Spanish Inquisition are thought to belong to another age. In more modern times, witches have been convicted by testimony, including confessions, which we cannot believe, with the approval of clergymen and judges of the highest standing. Working with fears and hatreds engendered by the seventeenth-century wars of religion, Titus Oates by his fabricated testimony secured the conviction of unoffending Catholics as parties to a Popish plot. Systematic fabrication of documents was necessary to convict Dreyfus and to hold him in captivity as a scapegoat for the hatred and guilt associated with anti-Semitism and the late-nineteenth-century hostility between France and Germany.

In our own time, the cases of Sacco and Vanzetti, and Mooney and Billings, have both remarkable resemblance to each other and a marked difference from the pattern of the more recent cold war cases. In each of the two murder cases, which were decided under the influence of passions associated with the war of 1914 and the years following, the pattern of proof was similar. There was worthless identification testimony. There was logically indefensible inference from the "consciousness of guilt" thought to be indicated by

alleged misstatements on arrest. In each case, what margin of doubt remains was created by evidence in the nature of ballistics evidence. (In the case of Sacco, an agreement was made that—for good reasons—the only persuasive evidence on the subject, coming long after the trial, was not to be considered by the commission on clemency. The agreement resulted in the decision of defense counsel not to push their contention that the bullet marked as the fatal bullet, and used in the ballistics test in question, was, in view of the peculiarity of its identification marks, not in fact the fatal bullet.)

In the great cold war cases, a new pattern of proof has gained national attention. It is a pattern that has been used, as we shall see, in the case of some minor British episodes. It has not, however, had the same importance in history as have the patterns of the Inquisition, the witchcraft trials, the Popish Plot, the Dreyfus case, and the Sacco-Vanzetti and Mooney-Billings cases.

The use of accomplice testimony to secure convictions of offenses which are either purely political or made up partly of political elements is characteristic of our recent leading cases. Former accomplices who were inevitably motivated by interests in gaining respectability, maintaining respectable positions, or saving themselves from prison or execution, have been supplemented by professional witnesses, sometimes originally employed by the police and sometimes former accomplices themselves, who often seem to have been interested simply in making money.

Louis Budenz, the only witness of any consequence in the Dennis case, appears to have been interested partly in respectability and partly perhaps in reconciling himself with his church. In that case the strongest evidence against the defendants was the long sequence of excerpts from classic Marxist literature, particularly Russian literature, from a

few books which were used in Communist Party school-rooms. Apart from this evidence the jury could hardly have convicted the defendants, and it is doubtful in the end whether their conviction was due to the substance of the books or to the numbing effect of the constant reading of their contents. Budenz gave the most persuasive testimony, to show that the Communist Party leaders, protesting always that they planned only a peaceful revolution in the United States (perhaps backed by force against a violent counter-revolution), used language in an "Aesopian sense" and meant violence when they said nonviolence. Budenz was a former accomplice in the supposed Communist conspiracy and his testimony had the defects which, as we have observed, are characteristic of accomplice testimony in general. It may be said, however, to have been corroborated, partly perhaps by the testimony of those who were originally FBI agents, but more effectively by some of the language in Russian books, however inapplicable the defense claimed it was to American conditions, and however inapplicable it may seem to the position of the diminutive American Communist Party.

In the Hiss case, Whittaker Chambers was, on his own testimony, a former accomplice in the espionage conspiracy which was in fact the principal subject of the case. He told his steadily changing and growing story first to the State Department, later to a Congressional committee, and finally in court, under circumstances in which he had the strongest motive to protect himself, his wife, his professional position (even though he eventually resigned from *Time*), and his respectability. He seems in fact fairly unreliable. One has not as good a means of judging the characteristics of the two wives, and may therefore consider the possibility that the Hisses and Chambers were better acquainted than Hiss has admitted. That is still far short of espionage, or perjury

about espionage. The only evidence on espionage that amounts to anything is the corroborative evidence of the typewriter, on which documents, some of them coming from other offices than Hiss's, in which espionage is known to have occurred, were unnecessarily typed. It is significant that this corroborative evidence, indispensable for even a reasonable doubt of Hiss's innocence of espionage, was produced by Hiss himself, in the confident expectation that it would exonerate him.

In the Rosenberg and Sobell cases, as we have seen, the serious evidence consisted entirely of that given by confessed former accomplices, the Greenglasses, Elitcher, and Elizabeth Bentley; and it was, as we shall notice shortly in somewhat more detail, entirely without even the kind of corroboration that was present in the Dennis and the Hiss cases.

It is in somewhat insignificant cases that the English law of evidence applicable to accomplice testimony has developed. The English law became the law of most American jurisdictions, but an emphatic warning by a dissenting but famous English judge is related to the caution about accomplice testimony which is expressed in the law of a good many important, though minority, American jurisdictions. In the federal courts of the United States, the English law is followed. In the courts of New York State, the second greatest of our jurisdictions, accomplice testimony, particularly in capital cases, is treated with much greater caution. It is striking that the Rosenbergs were tried in a federal court in which a rule of evidence was applied different from that which would have governed comparable proceedings in the nearby courtrooms presided over by judges of the state of New York.

The revolution which produced the first opinions and decision on the use of accomplice testimony was a hopeless and petty one organized and attempted by left-wing Protestants in 1662. It is almost forgotten among the other disturbances which characterized this part of that troubled century. Accomplice testimony was offered, and the greatest judge on the bench, Lord Chief Baron "Hales" (better known to lawyers as Sir Matthew Hale), thought the accomplice incompetent to testify, and thus also with such little standing that he ought not to be taken seriously.¹

But the L. C. Baron *Hales* said, that if one of these culpable Persons be promised his Pardon, on Condition to give Evidence against the rest, that disableth him to be a Witness against the others, because he is bribed by saving his Life to be a Witness, so that he takes a difference where the Promise of Pardon is to him for disclosing the Treason, and where it is for giving of Evidence. But some of the other Judges did not think the promise of Pardon, if he gave Evidence, did disable him, but they all advised that no such promise should be made, or any threatnings used to them in case they did not give full Evidence.

The Lord Chief Baron was in a minority of one, but he repeated his opinion—in less persuasive form—in his Pleas of the Crown, though it never became the Law of England.

His statement has meaning for the modern cases. Under the modern law, it is probably true that actual payment of money, or even a promise of payment of money on condition that a witness (not an expert) testify in a particular way, would not make the testimony inadmissible. The witness could insist that, though he had been promised money if he would testify as he was doing, yet he was in fact telling

¹ *Tonge's Case*, 2 State Trials 474, 6 Howell's State Trials 226 (1662) for the story and the evidence; *Kelyng's Crown Cases* 17 (1662) (1789 edition) for the opinions on the accomplice point.

the truth. It is hard to suppose, however, that a conviction for which the testimony of such a witness was either sufficient or manifestly necessary, as the Court of Appeals said the Greenglasses' testimony was for the conviction of the Rosenbergs, would be allowed to stand, either against a motion in the trial court or on appeal, even in a federal Court of Appeals. It is hard to avoid Sir Matthew Hale's clear implication that an assurance of life, or freedom from imprisonment, is normally at least as important as a promise of money.

The opinion in *Tonge's case* was followed next, by something of an irony, in a case in 1696² leading to the conviction of participants in an attempted rebellion to restore the Stuarts at the expense of William III, who had come to the throne through the "Glorious Revolution" of 1688.

The other leading case establishing the English law involved the trial in 1820³ of a rather unbalanced revolutionary socialist, Arthur Thistlewood, a disciple of Thomas Spence, for his leadership of the harebrained Cato Street Conspiracy.

These cases and others led to the rule that has survived in England and a majority of American jurisdictions that accomplice testimony may be the basis of a conviction of crime, even though it is not corroborated by independent evidence. The law does require that the judge in charging a jury shall warn them strictly of the caution to be used in believing accomplice testimony.

Judge Kaufman, following this rule, gave the jury warning in the Rosenberg-Sobell case, although the reader may doubt whether it was by any means as emphatic a warning as

² *Charnock's Case*, 12 Howell's State Trials 1378 (1696), with a report of Chief Justice Holt's brief and now standard observation on the subject in Holt, K. B. 681, 90 English Reports 1276. As Sir Matthew Hale did not, Chief Justice Holt kept a level head in witchcraft cases; but his views on the necessity for using accomplice testimony to preserve public order are not fully confirmed by the course of the leading English cases.

³ *Thistlewood's Case*, 33 Howell's State Trials 682 (1820).

the circumstances of the case required. In any event, the unreliable character of accomplice testimony remains, as we have seen, a matter to be remembered in every reflection on the case. Whatever check may have been present because of David Greenglass's relation to his sister seems to have been ineffectual in view of the misstatements, for example about the console table, which—whatever their significance in other respects—showed his readiness to testify falsely against his sister, even at the risk of sending her to execution.

In a large and strong minority of American jurisdictions the rule protecting accused persons against accomplice testimony is stricter than the English rule. As we have said, a characteristic and leading jurisdiction is New York State.

In New York State courts, the rule is that accomplice testimony will not convict a prisoner unless it is corroborated by testimony independently tending "to connect" the prisoner with "the crime." The rule was enacted by the legislature, and its meaning is not in all cases free of controversy.

There seems to be little doubt that the four principal witnesses in the Rosenberg-Sobell cases—the Greenglasses, Elitcher (259 ff., 276), and Miss Bentley—were accomplices. On the other hand, as a Columbia Law Review note indicates,⁴ the only possibility of independent corroboration is in the testimony of Dr. Bernhardt and the photographer Schneider with respect to the Rosenbergs, as evidence of preparation for "flight." The only possible independent corroboration in the case against Sobell is the evidence of a trip to Mexico, as a "flight."

It seems quite clear, however, that under the New York rule neither line of evidence would be sufficient corrobora-

⁴ 54 Columbia Law Review 219, 237 n.89 (1954).

tion. In one leading case,⁵ the New York Court of Appeals has held that the failure of a murder suspect to report to his parole officer in the days immediately following the murder and subsequently, as he had done before, was not sufficient to corroborate his alleged accomplice's testimony that the two had engaged in the holdup that led to the murder. The court held that the evidence of disappearance would not be admissible, and certainly not independent corroboration, in the absence of evidence of motive for the disappearance independent of the accomplice's testimony to the prisoner's participation in the crime.

In a later case involving a charge of grand larceny,⁶ the principal witness against the defendant was an alleged accomplice. The Appellate Division said:

The People claim that the corroboration required by section 399 of the Code of Criminal Procedure was supplied by evidence of appellant's flight and his concealment from the day after the crime until February 11, 1952. Judgment reversed on the law and the facts, indictment dismissed and defendant discharged. There is nothing in the record from an independent source which tends to prove that appellant was implicated in the actual theft. There is evidence that after the time that the crime was alleged to have been committed, appellant left the State of New York and went to Arizona, but the record is barren of any proof which connects the flight with the crime charged. Standing alone, flight is not sufficient corroboration (*People v. Reddy*, 261 N.Y. 479), neither is the proof of appellant's alleged concealment.

It will be apparent that, taken at its strongest for the prosecution, the corroborative evidence in the Rosenberg and Sobell cases would not satisfy the requirements of the New York law.

⁵ *People v. Reddy*, 261 N.Y. 479 (1933), with an annotation in 87 A.L.R. 767 (1933).

⁶ *People v. Trim*, 282 App. Div. 736 (1953).

Caution about accomplice testimony is supplemented in New York by caution in all cases involving the death sentence. Each caution played a part in a well-known New York murder case.⁷ Here an accomplice's testimony was corroborated only by an identification made by the police chief of the village a mile from the filling station where the holdup and murder were committed. The defendant here on trial denied that he had ever been in the village, and it was agreed by the four majority and the three dissenting judges in the New York Court of Appeals that adequate identification, and testimony to the presence of the accused in the village on the afternoon of the crime, would be sufficient corroboration. A bare majority of the judges, however, against a strong dissent, thought that identification of the accused, and testimony to his presence in the village with his two companions, by a police chief whose identification was positive, was still not sufficient corroboration to support a death sentence. In the alternative, the majority held that, in view of all the evidence in the record, the death sentence should be set aside in the exercise of the power of the court to review death sentences on the record as a whole.

The New York rule and its applications serve to bring out weaknesses in the cases against the Rosenbergs and Morton Sobell. They also suggest the desirability of amending the federal statutes to require complete review of sentences "based on" accomplice testimony, at least in cases where the sentence is death. Moreover, the cases indicate that an Attorney General familiar with the New York law, like Mr. Brownell, might have been expected at least to consider the entire record, including the evidence offered on the final motions in the case, before recommending that the President of the United States order and expedite the execution of the death sentence against the Rosenbergs.

⁷ *People v. Crum*, 272 N.Y. 348 (1936).

The Final Consideration

AS I HAVE said, I first became convinced that the Rosenbergs were entitled to a new trial in May of 1953, and my public statement on the matter led to an invitation from Mr. Emanuel Bloch to a conference with him in New York. The upshot of the conference was that I worked on the case in its final phase, helping to deal with the motion for a new trial.

For more than two weeks in June I worked closely with counsel for the Rosenbergs, along with other volunteers, devoted people, ready to work all night at humble jobs of typing and other routine duties. As a result of this close association I gradually reversed some of my earlier opinions on the case. Whereas formerly I had merely criticized the sentence, I now came to believe in the innocence of the Rosenbergs.

In previous chapters I have referred in some detail to the motion for a new trial. Here I want to deal further with certain fundamental questions of justice about which, in the end, we are most concerned.

The motion for a new trial had at the very least such merit that it deserved more careful and deliberate consideration than it received. The speed with which the motion was disposed of was of itself an indication that something was wrong in the treatment of the case by the courts.

During a brief experience in Wall Street years before this, I had seen something of motions in commercial litigation. One of the last things I did there was to work on a defend-

ant's motion for a bill of particulars. Our railroad company asked a plaintiff shipper some 150 questions about his claim for damages on account of harm to his goods during shipment. Each of the questions was legitimate, and whole groups of questions were supported by the citation of authority for our right to ask them and have them answered. We were defendants, and in a sense we were delaying matters. Yet no one questioned our right to take plenty of time to work out our motion and to brief it adequately. This I am sure is a familiar experience of lawyers in commercial and civil litigation generally.

It is true that civil litigation is generally more business-like and less influenced by emotional factors than criminal prosecution. Nevertheless, even in criminal cases, time can and should be afforded for an adequate treatment of such a motion as our motion for a new trial in the Rosenberg case. In one of the two cases cited against us by the Court of Appeals to which we shall pay more detailed attention later, an income tax evasion case, the motion for a new trial was before the courts for two years and three months after the conviction had been affirmed by the Supreme Court of the United States.

The petition for certiorari to review the conviction in the Rosenberg case was finally denied on November 17, 1952. It may be said that our papers were served on the prosecution on the morning of Saturday, June 6, 1953, and that our motion was not finally disposed of until a week from the following Monday. It seems to me more significant to observe that we argued our motion in the District Court on a Monday, and that it was apparently decided against us at the conference of the United States Supreme Court on the following Saturday.

For a complete account of the case we shall need to pay some attention to our motion for a new trial. It was com-

bined with another motion to which we shall not have occasion to refer in any detail. The proceeding on the motion in the Supreme Court was also combined with the proceedings on adverse decisions on the other three motions to which we have already referred. Nevertheless we shall center attention on the motion for the new trial.

The principles applicable to a motion for a new trial are simple. Indeed the public is interested in criminal procedure and has some reason to ask that the determination of great criminal cases shall commend itself to public opinion. When the Attorney General criticized Dr. Urey for intervening in or speaking about the case, he implied that there were technical matters here beyond Dr. Urey's comprehension. This is not so. The principles applicable to criminal cases, and particularly the probative value of evidence, are and must be within the comprehension of ordinary people.

A motion for a new trial is made on affidavits, sworn written statements not subject to cross-examination. In the nature of the case, affidavits are not conclusive. They do not establish anything. Yet for many purposes they must be taken as true, however provisionally. It is generally recognized that uncontroverted affidavits on motions for a new trial are to be treated as *prima facie* true. If they are self-contradictory, they may be disregarded. If they are made by people who have already testified, and whose credibility has been thoroughly impeached, it may be that they may be discounted for that reason. It may be that, even if true, they are not persuasive with respect to the issue to which they are addressed. On all these accounts, affidavits may be disregarded. If they are controverted, of course, the judge must consider the issue raised by the controverting affidavits. Even in such a case, however, in view of the imperfection of affidavit evidence, it is doubtful whether a judge should *resolve* an issue raised by controverting affidavits alone, on a motion for a new trial. In our case, the only

controverting affidavits introduced were abandoned; and the Judge paid no attention to them in his opinion. It seems clear, on the authorities, that our statements must be taken as true, for purposes of testing the Rosenbergs' right to a new trial.

This is particularly so, in view of the Judge's refusal to hear our witnesses or to look at the table which we offered to present in court. A judge may, on a motion for a new trial, make a preliminary examination of the evidence offered. If he has not done so, he leaves himself open to the argument that he has failed to take advantage of an opportunity to test the persuasiveness and credibility of witnesses.

This may seem technical, but it is simple common sense. There is nothing else one can do with affidavits. The difference between cold print and living witness is very important. I have at times suggested that the quiet reader has some advantage over the person who saw the witnesses, if one must choose; but no one doubts the importance of seeing witnesses. If they are there, available for questioning, and the Court neglects to take advantage of the opportunity, he is no longer free to reflect on the credibility of witnesses who have not been examined before him.

Some technical-sounding matters are involved in a motion for a new trial. The newly discovered evidence must be admissible under the law of evidence. The table would surely be admissible. David Greenglass's pretrial statements were admissible as prior statements inconsistent, whether because of omission or commission, with the testimony which he gave at the trial. Thus Titus Oates was examined in the case of his first victim, a Roman Catholic named Coleman, about the disparity between what he had not said when he first gave evidence and what he did say at the trial. The case is not only an authority for the general rule recognizing that such a disparity may be brought out, but a warning of the

significance which it may have. In spite of the presiding judge's confidence, and his hostility to the defendant, Coleman's conviction and execution are today recognized as a miscarriage of justice, and his trial began the terror of the fabricated Popish Plot.¹ Ruth Greenglass's statement about her husband's character for veracity, taken to represent the testimony which she would give at the trial, whether under examination or cross-examination, would be admissible as to his credibility. It might also afford the basis of a motion for a psychiatric examination. On the whole the critical issues in a motion for a new trial are issues of the probative value of the new evidence, issues of the sort which laymen on a jury are called on to decide.

One issue much discussed in connection with motions for new trials is the issue of diligence. Counsel and parties must be diligent in making available at the trial evidence which is at their disposal, or in hunting for evidence which the progress of the case suggests may be important. The reason is partly one of economy. A prosecution is a tremendous expense of time, energy, and resources. Cases cannot be retried again and again.

More important perhaps, particularly in a capital case of serious public importance, is the mark of implausibility which attaches to evidence which could easily have been produced at the time of the trial. We have considered the newly discovered evidence, and the failure of the defendants and their counsel to produce it at the time of the trial, with this in view. We have urged that the explanation for failure to introduce the evidence at the trial is natural, and completely absolves both counsel and defendants from any charge of neglect. It must be remembered that the Rosenbergs were in prison, and that their family was not on trial. The possession of the table by Julius Rosenberg's sister or

¹ Coleman's Case, 7 Howell's State Trials 1 (1678).

his mother is not by any means the same thing as possession by the Rosenbergs or their counsel.

While somewhat different considerations apply to delay in producing the table after the trial, there are also some similar considerations here. The suspicion that counsel may have saved a piece of evidence to serve as the basis of a motion for a new trial is supported by considerable experience in criminal cases. He is, it seems, less likely to do this in a capital case than in cases not involving a death sentence. In a capital case, the risk of delayed presentation of evidence saved for purposes of a motion for a new trial is much reduced. Again, however, the question of plausibility arises. We have dealt with this question in considering the reasons for the delay between the spring of 1951 and the spring of 1953 in discovering the table in the elder Mrs. Rosenberg's apartment.

There remain two other sets of objections to newly discovered evidence, which have been much discussed by the courts. It is said that a new trial will not be granted on the basis of newly discovered evidence which "merely impeaches" a witness. It is said, similarly, that a new trial will not be granted on the basis of newly discovered evidence which is "merely cumulative" in effect. It was said by the Judge, in denying our motion for a new trial, that the evidence presented for a new trial in our case was open to both of these objections.

Let us see what the objections amount to. In a Kentucky case,² a woman was convicted of manslaughter in killing her husband. Her defense was self-defense. A witness who had a grudge against her testified to her unprovoked attack on her husband. He was the only witness for the prosecution who claimed to have been present when her husband was killed. Witnesses for the defense testified that he was not

² Hensley v. Commonwealth, 241 Ky. 367 (1931).

present at the time of the killing. After the woman's conviction, it turned out that, before the trial, the particular witness had himself said that he was not present at the time of the killing. This newly discovered evidence, although it may be said merely to have impeached the witness, and although it may be urged further that it was merely cumulative in effect, was of course admitted. No one can have the least doubt that such a result must be achieved in any comparable case. The trial judge had declined to grant a new trial, because of his general view of the merits of the prosecution as compared with the merits of the defense. He was reversed by the Supreme Court of Kentucky.

In a case involving a robbery conviction, arising in the District of Columbia,³ the trial judge's decision denying a new trial was reversed by the Court of Appeals, under the following circumstances. The complaining witness said that he had been in a crap game, and had been attacked and his money taken by the defendant. The defendant apparently took the stand and defended himself, denying the crime. He had tried to find a policeman who went back with the complaining witness after the alleged robbery. He had not succeeded in this until after the trial. When he did so the policeman was ready to testify that there had been no \$20 bill on the table when he went back, as the complaining witness had testified. The majority of the Court of Appeals held that the trial court ought to hear the policeman and decide whether he would testify to this effect; and that, if he would testify to this effect, a new trial should be granted. The evidence was at least primarily impeaching, and was apparently cumulative. The question is perhaps somewhat closer than the question presented by the Kentucky case, but the result seems fair.

If a principal witness for the government is discredited,

³ Coates v. United States, 174 F.2d 959 (1949).

and the case is such that in the absence of his testimony a verdict would probably have been returned for the defendant, then the new evidence discrediting the witness must be permitted to come in. The word "cumulative" is completely undefined in the cases. It is best understood as a general warning that cases are not to be retried with evidence of the same general quality on the same issues introduced all over again.

The main test on a motion for a new trial is the test of whether the newly discovered evidence is so important that it would in all likelihood result in an acquittal on a new trial. If the newly discovered evidence measures up to this standard, a new trial must be ordered; and it will be an abuse of discretion for a trial court to refuse to order it. We have throughout our discussion seen reasons to think that the newly discovered evidence in the Rosenberg case satisfies the standard as thus stated. The more problematical the evidence at the trial, the more likely it is that new evidence would produce a different result on a new trial. When the evidence at the trial of the Rosenbergs is considered with the new evidence, the case for a new trial seems persuasive.

Though our position seemed to us strong, the District Judge, Judge Kaufman, who had presided at the trial, decided against us.

At this point we shall have to stop briefly again on one or two technical matters. We have already spoken of the fact that we had two motions based on the same newly discovered evidence before the Court. One was the motion for a new trial, which we have been discussing. The other was a statutory motion, a close relative of the old petition for a writ of habeas corpus.

The advantage of the motion for a new trial lies in one characteristic. The test, as it is commonly treated, has just been described. By contrast, a motion in the nature of a

petition for habeas corpus will be granted only if misconduct of a serious character, not required for a new trial, has appeared in the course of the original trial. On the facts which we presented, our strongest point on this motion was that the prosecution had made a knowing use of perjured testimony.

The statutory motion in the nature of habeas corpus has certain advantages. It is not certain, under revised rules applicable to motions for a new trial based on new evidence, that we were in time with our other motion. There is a "two year rule," which the courts have thus far interpreted as starting a limit running from the time when the Supreme Court has said its last word on an appeal. The time for an appeal is closely limited, unlike later extraordinary proceedings, and this imposes some effective time limit on the motion for a new trial based on new evidence. Nevertheless there have been few decisions on the rule and it is somewhat ambiguous. It is arguable that the time began to run from the original judgment at the end of the trial of the Rosenbergs. If so, we were too late. The question was discussed in each court, but no court took a stand on this question. It has not been decided by the Supreme Court of the United States.

Another theoretically possible advantage of the motion in the nature of habeas corpus is that the judge may, if he so desires, determine himself that there was such basic misconduct as to invalidate the original trial. If he makes this decision, he may release the defendant on his own authority. On the other hand, he may, at his discretion, if he is satisfied that the conditions for a successful motion have been fulfilled, order a new trial by virtue of the statutory provisions governing this motion.

Judge Kaufman did not decide against us on the basis of the two year rule. He discussed our statutory motion sepa-

ately from our motion for a new trial. Nevertheless what he said about the statutory motion may at some points fairly be read as indicating the basis of his decision on the motion for a new trial. We were ourselves more confident in our motion for a new trial than in our statutory motion; at least I felt that way. Henceforth I shall speak about the motion for a new trial, when I speak of the new motion, unless I indicate that I am speaking about the statutory motion.

Our argument of our motions before Judge Kaufman took well over two hours. Government counsel occupied at least half an hour. At the end of the arguments, Judge Kaufman retired to his chambers for fifteen minutes. He came back and read an opinion, fully written out, which took thirty-two minutes. He explained his action by saying that he had had our papers since Saturday, and had prepared his opinion on the basis of the papers. It may be that he heard nothing in argument which seemed to him significant. On the other hand, it seems fully as likely that he was prepared in advance not to be persuaded by anything which might occur in oral argument.

He held that we had not satisfied the requirement of diligence, since the table was in the hands of members of the Rosenberg family, and since they were available for testimony at the trial. What has already been said indicates our opinion on this point. As we have observed, Judge Kaufman also held that the new evidence would be "cumulative and would be impeaching in character of some witnesses." It is hard to see in what sense the table itself is cumulative or merely impeaching; but it may be recognized that its greatest effect may in fact have been in impeaching the Greenglasses. What we have already said about the use of new evidence which would impeach a witness as the basis

for a motion for a new trial indicates our opinion on this point.

Judge Kaufman made some observations which seem worth particular notice. With respect to David Greenglass's pretrial statement he observed that David Greenglass himself had said that his early statement had been "very general" and that he had not then remembered "all the details" which he put in the later statement. It is difficult to treat the cross section of the bomb as a "detail," or the connection of the Rosenbergs with the lens mold episode. Nor does this treatment of the pretrial statement deal with the inconsistencies which it disclosed in the account of the entire lens mold episode.

Judge Kaufman said: "According to this affidavit [by Bernard Greenglass], David Greenglass told his brother that he threw the piece of uranium into the East River, I submit, a strange way to engage in espionage." It is of course by no means a strange way to prepare to escape detection if one has been engaged in the theft of uranium.

The Judge said: "Members of the Rosenberg family and the defendants themselves submit affidavits to the effect that the table is the same one as the one they saw in the Rosenbergs' apartment. On the basis of the defendants' own contention, this table was an inexpensive one, handled by Macy's, and was undoubtedly mass produced and widely sold. One such table must look very much like another."

The Judge's opinion here misrepresents the evidence offered. The defendants' affidavits show that witnesses were available who would trace the actual table in the Rosenbergs' apartment. Their testimony is, as the Judge says in the first sentence just quoted, that "the table is the same one" as the one in the Rosenbergs' apartment. Evelyn Cox, who had simply testified at the trial that a picture looked like the table she saw in the apartment, was now ready to

testify that the new table looked like the one she saw in the apartment; but her testimony was originally, and in her new phase, not of first-rate importance, logically at least.

Much more important was the testimony represented by the affidavits of Ethel Goldberg and the elder Mrs. Rosenberg, to the effect that they had the actual table, the only table which they ever saw in the Rosenbergs' apartment. The Judge here is indicating a point at which prosecuting attorneys might on a later trial raise difficulties about the table actually produced. They might indeed question the Rosenbergs sharply as to whether this was, in fact, the table. On the affidavits of Ethel Goldberg and the elder Mrs. Rosenberg, in the absence of examination of witnesses and table by the Judge, we must take it, for purposes of a new trial, that these witnesses, members of the Rosenberg family, would testify that they actually had the table. The force and persuasiveness of their testimony would be for the new jury. On uncontroverted affidavits, we can only assume that the testimony would have been effective.

At another point the Judge said: "The table is said by the defendants to have at all times been in the possession of the Rosenberg family, and it seems highly incongruous to blame the government for failure to present it at the trial, assuming *arguendo*, that we are dealing with only one table." This is the only reference in the Judge's opinion to any possibility that there was more than one table, or a table in different conditions at different times. More important, it is of course a complete misrepresentation of the defendants' point. Defendants did not object to the government's failure to produce the table which was in the possession of members of the Rosenberg family at various times during the events which are in question. They did object to the government's failure to produce such a table as that about which Ruth Greenglass testified, which she

undertook to describe, and which was subsequently confused with the photograph in the questioning of other witnesses; or to explain the failure to do so, or to present any testimony about the meager furniture in the Rosenbergs' apartment when the FBI first visited it. The Judge's language is certainly the language of a prosecutor, preparing for a new trial, rather than that of a judge passing on the merits of a motion for a new trial.

These quotations seem fairly representative of the Judge's opinion. At only two places does he address himself to the real issues of the motion. At both these places, he repeats the same point. The point is that the table was an insignificant episode at the trial.

What we have already said should be a sufficient answer to this point. The table episode was a vivid one. It may easily have seized the attention of the jurors, and given their imaginations and impulses something simple and concrete with which to work. Much more important, however, as we have emphasized again and again, is the significance of the table episode in discrediting the Greenglasses, the only government witnesses in the case whose testimony had any significant probative value, and in removing discredit from the testimony of the Rosenbergs.

The evening following the Judge's decision, we prepared our papers for our motion for a stay, pending briefing and preparation for argument, in the Court of Appeals. We appeared the following afternoon to argue for a stay. Over our protest, the Court of Appeals directed us to argue the appeal itself. They did not decide against the stay and we directed part of our argument to our request for a stay.

Judge Swan, the Chief Judge of the Court of Appeals, asked us for a communication about our position. By the end of our argument, we no longer had a copy of Judge

Kaufman's opinion. We had given our only copy to the Court of Appeals. Nevertheless I spent the next night drafting a memorandum, which we edited the next morning and got to the District Attorney and the Court of Appeals the following afternoon. By appointment, when I delivered a copy to the United States Attorney for the Southern District of New York, Mr. J. Edward Lumbard, I had a conversation with Mr. Lumbard. He was courteous, and we understood each other, but we were far from viewing the case in the same light.

This was on Wednesday, June 10. On Thursday, June 11, we awaited the decision of the Court of Appeals with a degree of confidence. It seemed inconceivable to me that a motion which appeared to have as much merit as ours did, in such a serious matter, would be disposed of without a full opportunity for briefing and well-prepared argument. Nevertheless, late in the afternoon we learned that the decision of the District Court had been affirmed.

The Court of Appeals did not write an opinion, but it cited two cases. One was a recent decision of the same court, affirming a judgment denying a new trial in a narcotics case.⁴ Judge Swan had written the opinion for the Court, and Judge Frank, another of the judges in our case, had dissented. (Judge Clark was the third judge who had sat in that case, while our third judge was Judge Augustus Hand.) In the narcotics case, a government agent who had testified at the trial was later found to have been engaged in misconduct and he was discharged from government service. The motion for a new trial depended largely on this circumstance. Judge Swan held that the testimony of the defendant's accomplice, corroborated by the testimony of two government officials other than the one discharged, was sufficient to sustain the original conviction; and that

⁴ *United States v. On Lee*, 201 F.2d 722 (1953).

the new evidence of the particular agent's misconduct was not such as to make a different result on a new trial likely.

With all deference, the case, at least as viewed by Judge Swan, was, it seemed to us, a much less strong one for a new trial than was ours. In the case cited as authority, there was one witness who, though an accomplice, was not in any way impeached by the new evidence. He had been corroborated by two still unimpeached government officials. The conviction in our case depended on accomplice testimony. It was not corroborated at any point by independent testimony "tending to link the defendants with the crime charged." Moreover, the newly discovered evidence seemed to us devastating for the reliability of the accomplices on whose word the conviction, as the Court of Appeals itself had recognized, depended.

The other case cited by the Court of Appeals was the income tax violation case to which we have already referred.⁵ The issue at the trial in that case was whether the

⁵ *United States v. Johnson*, 327 U.S. 106 (1946).

The Rosenberg case presents challenging questions about possible defects in the law. Thus Mr. Stephen Love is particularly critical of the federal rule which permitted Judge Frank to say on the first appeal: "But where trial is by jury, this court is not allowed to consider the credibility of witnesses or the reliability of testimony. Particularly in the federal judicial system, that is the jury's province."

There are unsettled questions about the motion for a new trial because of new evidence in a capital case. While the United States Supreme Court in the Johnson case set maximum limits for the consideration of a motion in an income tax evasion case, it has not determined the minimum requirements for the consideration and determination of such motions in general or in a capital case in particular. The Court did indeed encourage the Court of Appeals of the District of Columbia to make its decision reversing an order denying a new trial in a murder case where the newly discovered evidence showed that the victim had an opened penknife in his trousers pocket at the time of the killing. *Griffin v. United States*, 336 U.S. 704, 708-709 (1949), with the ensuing decision in the Court of Appeals, 183 F.2d 990 (1950). The Solicitor General's brief in this case not only conceded but suggested that it was appropriate to apply a more liberal rule, granting new trials more readily in death cases than in other cases. Judge Augustus Hand, one of the

defendant was actually the owner of a piece of property of which the rentals did not appear in his income tax statement. The question whether he was the beneficial owner was a close one, and turned on conflicting circumstantial evidence. The defendant's affidavit on his amended motion for a new trial was designed to show the availability of new evidence to prove that there had been perjury at the trial by one of the government's principal witnesses. This affidavit was sharply controverted by affidavits submitted on behalf of the government. The defendant's affidavit and the controverting affidavits in turn presented again the question of circumstantial evidence about the defendant's ownership of the property in question. A motion and an amended motion were before the courts for two years and three months, and the District Judge in two careful opinions denied them both. His second decision, on the amended motion, was reversed by a 2 to 1 decision of the Court of Appeals.

The Supreme Court, speaking through Mr. Justice Black, unanimously held that such an issue as that presented by the affidavits on the amended motion for the new trial

judges who decided our motion in the Rosenberg case, had said in an earlier case, not a capital case: "It is . . . usual to treat the denial of such motions as unappealable . . ." *United States v. Forzano*, 190 F.2d 687, 689 (1951). Compare Frank, *Courts on Trial*, pp. 326-327 (1949). But compare Judge Frank's dissent in the *On Lee* case, which has just been discussed. There are other unsettled questions in the law governing new trials in criminal cases.

One can only list other questions presented by the case: the standards of cross-examination and summation; the dangers of abuse of conspiracy doctrines; accomplice testimony; the review of capital cases by the Supreme Court; the power of appellate courts to revise sentences, at least in capital cases; the standards for sentences implied in *Vetterli v. United States*, 344 U.S. 872 (1952); the treason clause of the Constitution; the effect of perjury by a witness, though not known to the prosecution at the time, on motions in the nature of habeas corpus and on applications for habeas corpus; practice with respect to stays; modification of the Atomic Energy Act; provision for deliberation on clemency application; the use of capital punishment.

was primarily for the decision of the trial judge. It referred to the danger that such motions, and appeals from such motions, might be used "as a method of delaying enforcement of just sentences."

There was a sharply controverted issue of fact on the affidavits submitted on the amended motion for a new trial in the income tax case. There was no such issue in our case. The two similar motions for a new trial in the income tax case were given careful consideration by District Court and Court of Appeals over a period of two years and three months.

The Supreme Court had finally decided not to review the original conviction in the Rosenberg case on November 17, 1952; and even if the time between then and the week in which our motion was before the courts is counted, the periods are hardly comparable in the two cases. It is hard to say that the week or less in which our motion for a new trial was actually before the courts indicated any danger that such a motion and such an appeal might be used "as a method of delaying enforcement of just sentences."

Nevertheless, the Supreme Court was to decide against us. We had before the Court at its final conference of the year, on Saturday, June 13, our motion for a stay. Our motion was in effect a request for time to file the printed papers required on a motion for certiorari—for time, in effect, formally to request the Court to review the decisions on the motions with respect to the sentence and the decision with respect to our motions based on the newly discovered evidence. We also had before the Court a request for reconsideration of its decision declining to review the adverse decision of the motion raising objections to the conduct of the trial on account of the Schneider testimony, the Perl indictment, and the newspaper publicity.

We asked the Court for time to bring before it, in an orderly way, all the serious questions which had arisen since the original trial. At its conference on June 13, the Court decided by a 5 to 4 vote, against the recommendation of Mr. Justice Jackson, to whom we had first gone, that it would not hear oral argument on our application. Presumably the Court decided at the same time to deny our application for a stay. At any rate, on Monday, June 15, the Court announced its decision, by 5 to 4 votes, declining to hear oral argument on the application and denying our application for a stay.

We went at once to Mr. Justice Douglas in chambers. We had some hope afterwards that we had persuaded him to examine the record and convince himself that the Court had not fully considered our motions. Besides the motions to which we have referred, he had before him the Court's denial of a final motion for leave to file a petition for a writ of habeas corpus, made at the very end of the Court's session on Monday by Mr. John Finerty, an associate of Mr. Bloch since the time of the first motion following the conviction. Mr. Finerty's motion was based on the contention that the Greenglasses' testimony, particularly in the light of a new affidavit by Dr. Urey, must have been perjured and known to prosecuting officials to be perjured.

On Tuesday Mr. Daniel Marshall and Mr. Fyke Farmer appeared before Mr. Justice Douglas to argue their point about the Atomic Energy Act. On Wednesday we were relieved and elated at Mr. Justice Douglas's decision to grant a stay, on the grounds urged by them. When we learned that the Attorney General was moving to vacate the stay, we were apprehensive. We had some misgivings about the application of the Atomic Energy Act.

Mr. Bloch had, as we have seen in Chapter 1, raised the question of the policy of the Act on the appeal from the original conviction of the Rosenbergs. One of his three early

motions (dealt with in Chapter 9), which we had been trying to get the Court to review, raised the question of the policy of the Act in another form. In each case, his argument was directed only to the effect of the Act on the sentence.

The principal difficulty with the simple point about interpretation is that the interpretation of the Act for which Mr. Farmer and Mr. Marshall argued would have resulted either in a marked and peculiar inconsistency in sentences for atomic espionage as compared with sentences for other kinds of espionage, or else in a complete change, by questionable implication, of the sentences provided for all kinds of espionage by the old Espionage Act itself. In view of the difficulty which Mr. Justice Douglas, and in turn Mr. Justice Black and Mr. Justice Frankfurter, felt about the point, it seemed, however, only reasonable to expect the Court to leave Mr. Justice Douglas's stay in force, and give itself time to consider the matter deliberately.

Two years before, the Court had upheld a stay granted by Chief Justice Vinson to give the government additional time to continue its protracted efforts to avoid complying with orders directing it to return to private owners the controlling stock in the Dollar Steamship Company lines.⁶ Mr. Justice Frankfurter, though somewhat ambiguously, and Mr. Justice Jackson quite clearly, had disassociated themselves from the action of the Court. What was said by the Court then seemed sensible, and appeared to have clear application to our case: "We agree that expeditious disposition of the important issues in this lengthy proceeding is entirely desirable. But our desire for expedition must be weighed against the danger to orderly presentation of important issues inherent in hasty briefing and argument."

While the majority of the Court may have been correct

⁶ *Land v. Dollar*, 341 U.S. 737 (1951), finally determined in 344 U.S. 806 (1952).

in its interpretation of the Atomic Energy Act, the two opinions written for the majority, apart from Chief Justice Vinson's later survey of the case, bear the marks of haste. The strongest point about the Atomic Energy Act is not that it repealed the Espionage Act, so that indictments for atomic energy espionage covered by the later Act could no longer be had under the earlier Act. The Atomic Energy Act could be read as stating a policy which would have limited the sentence in the Rosenberg case. Where there was an indictment under the later Act, a death sentence was authorized only for espionage in time of war (as in the case), but then only on a showing of intention to injure the United States as distinct from an intent to give some advantage to a foreign power and only on the recommendation of a jury (neither of which was present in the case).

This was a conspiracy which on the government's view began before but continued after August 1, 1946, the effective date of the Atomic Energy Act.⁷ The only authorities cited by the Court dealt with contentions that a later Act had completely or in part repealed an earlier Act. They supported the view that acts providing different sentences for the same offense may be designed to enlarge a prosecutor's choice of remedies. If the contention dealt with had been our contention, and if it had succeeded, a wholly new indictment would have been necessary, and

⁷ All of the acts of atomic espionage conspiracy, except for one particularly questionable matter of uncertain date (see Chapter 2, pp. 43-44), were clearly alleged to have taken place before the effective date of the Act, and if they had stood alone would have been governed by the Espionage Act, under the federal statutes. This circumstance was not, apparently, much relied on by the Supreme Court; and indeed Judge Kaufman explained the severity of the sentence by his view that the single conspiracy extended into 1948 and the period of the manifest cold war, by virtue of the attempts at non-atomic espionage to which Elitcher testified (1606, 1615). A revision has made the Atomic Energy Act consistent with the Espionage Act.

the entire proceedings would have had to begin anew. Counsel for the Rosenbergs, at any rate, made no such drastic claim. Their claim was only that in a case of atomic energy espionage the policy of the Atomic Energy Act required that the death sentence should be imposed only in case the offense was proved to have been committed with intent to injure the United States, and that there was no evidence or suggestion of such an intent in the record of the case.

The opinions of the majority indicate a view that such an application of the Act would be objectionable on the ground that it would be an ex post facto application of law to an offense committed, partly at least, before the Act was passed. It is elementary, however, that the alleviation of a sentence provision, which might be applicable to a crime, by a later statute, is not objectionable as an ex post facto application of law; although of course an increase in the severity of the sentence would be. The difficulties which the Court had with the problem are an indication that there was great force in the argument that deliberate consideration should be given to its solution.

Execution

THE Supreme Court rendered its final judgment at a session commencing at noon on Friday, June 19, 1953. Two motions were then made and denied. One was a motion urging the Court to reconsider its decision upholding its power to vacate Mr. Justice Douglas's stay. The other was a motion asking for a stay pending time for consideration of the Rosenbergs' petition for clemency, now for the first time legally before the executive. After various delays, the reading of opinions, the drafting of motions, their consideration, and their denial, it must have been about 2 o'clock when the Court made its final decision about the case. The execution was set for 11 o'clock that night.

Until a final decision by the courts, a petition for clemency is not legally placed before the President. It remains in the custody of the Pardon Attorney, a functionary of the Department of Justice. Mr. Bloch now proceeded to take steps which would make a deliberate consideration of the matter by the Chief Executive possible. He found that a telegram asking for a hearing by the President had not been brought to the President's attention. At length he was assured that the petition for clemency was now formally before President Eisenhower.

We still entertained some hope. It seemed to us that the uncertainties in the case, which became clearer as it proceeded through the courts, made the sentence, at least, very much less defensible even than it was at first. We

thought that the whole course of events might well now receive calm and deliberate consideration by the President and his legal advisers.

It is true that the President had expressed views unfavorable to an application for clemency during a recent visit by some respected clergymen. He had made two significant points. First, he had referred to his experience with courts-martial in wartime Europe. He apparently had great confidence in the deterrent effect of a severe courts-martial policy. This is, at any rate, a rational approach to the problem of punishment. Unlike Judge Kaufman's retaliatory theory, the deterrent theory of punishment may at least be applied in a calm way, on a rational estimate of probabilities and needs. There is no adequate statistical basis for determining whether or not it actually works, and informed opinion is skeptical. Moreover, the theory has a curious application to the people concerned in our case. The effect on potential spies of the severe treatment of the Rosenbergs must be counteracted to some extent by the lenient treatment of Harry Gold and David and Ruth Greenglass.

The President's second point in his conversation with the clergymen is more curious. His objection to commuting the sentence of the Rosenbergs was that they would then be eligible for parole in fifteen years—assuming apparently a commutation to a term of forty-five years or more. Again, it may be observed that David Greenglass will be eligible for parole five years after his sentence began, and Gold will be eligible ten years after his sentence began. More serious than this consideration, the remark betrays, on the part of the President and his legal advisers, an attitude toward the administration of parole which is, to say the least, uninformed.

We were bitterly disappointed, though we should not

have been surprised, when the President denied the application for clemency.

Upon hearing the President's decision, Mr. Bloch asked that the execution be postponed until after the Jewish Sabbath. He was shocked when, instead, it was moved ahead, and scheduled to occur before sunset on the same day.

To make sure that no possible step had been neglected, we remained at the Supreme Court Building, while Mr. Bloch traveled back and forth between there and the Department of Justice. At about 6 o'clock we received the printed copies of the opinions of Mr. Justice Jackson and Mr. Justice Clark, with whom, in each case, five other Justices concurred.

Mr. Bloch was immediately struck with the last two sentences in Mr. Justice Jackson's opinion. "Vacating this stay is not to be construed as endorsing the wisdom or appropriateness to the case of a death sentence. That sentence, however, is permitted by law and, as was previously pointed out, is therefore not within this Court's power of revision."

Mr. Bloch at once asked Mr. Robert Stern, the acting Solicitor General, who had been representing the government before the Supreme Court, whether Mr. Stern could get Mr. Bloch into touch with the Attorney General. Mr. Stern, with whom our relations had been excellent, at once called the Attorney General. He reported that the Attorney General replied that he would not talk with anyone who had talked about him as Mr. Bloch had done on hearing of the expediting of the executions that afternoon.

Mr. Bloch urged on Mr. Stern that he bring to the attention of the Attorney General the concluding sentences of Mr. Justice Jackson's opinion.

We then proceeded to the White House. Mr. Bloch had

a letter from Ethel Rosenberg, more informal than the petition for clemency, to deliver to the President. The White House guards took the letter and undertook to deliver it to the President. They said, however, that we must telephone from outside in order to get an appointment, which we wished, to see the President himself. This must have been about 6:15.

We accordingly started for a nearby store, to find a pay telephone from which to call the White House. We were rushed by a crowd. The policemen gave us good protection, but it was plain that the step was going to involve a delay. Instead we took a taxi and returned to Mr. Bloch's hotel room.

Friendly reporters were permitted to join us. Mr. Bloch spent nearly all the next hour, until almost 7:30, trying to make sure that the concluding sentences of Mr. Justice Jackson's opinion were brought to the personal attention of the President. Mr. Bloch, quite reasonably, interpreted these sentences as going quite as far as the Court felt it could do in urging that the sentence be reconsidered, or, at the very least, as washing the Court's hands completely of the death sentence.

Mr. Bloch was kept waiting by the White House switchboard for twenty minutes. He gave up for a while, then tried again. Finally, he reached a secretary, and was able to ask him whether Mr. Justice Jackson's words had come to the President's attention. He was told that these were legal matters that did not concern the executive department. We never knew whether the President saw the Court's opinions before the Rosenbergs were executed.

At 7:30 the reporters left us. In a small group we heard the radio announcement of the execution. The Rosenbergs had not made the confessions in exchange for which the government had offered them their lives.

Other Punishments

SINCE the execution of the Rosenbergs, others have continued to suffer on account of their supposed crime.

Mr. Emanuel Bloch, their devoted friend and lawyer, was subjected to disciplinary proceedings for his remarks at the Rosenberg funeral, by a committee in practical effect acting for the New York City bar. He had held himself closely in check while the case was in the courts. When the Attorney General expedited the execution to avoid the Sabbath, Mr. Bloch criticized him fiercely. Two days later, at the funeral, he again sharply criticized the administration. Without any precedent, his second criticism was made the basis for disciplinary proceedings. The praise of Mr. Bloch in Mr. Justice Jackson's opinion in the Rosenberg case repeated his spontaneous and even more moving praise in the course of the final arguments, and it might have been supposed that it would recall the bar to its senses. The proceedings were pending, and doubtless adding to his already heavy burdens, when Mr. Bloch died suddenly of a heart attack on January 30, 1954.

One of the burdens which Mr. Bloch had willingly carried was the burden, given him by their parents, of making provision, with the agreement of their grandmother, Mrs. Sophie Rosenberg, for the care of the Rosenbergs' sons. Some three weeks after his death an effort was made, ostensibly by two social agencies, to break the arrangements

made for the boys by Mr. Bloch and their grandmother. The effort prolonged the suffering and threatened the welfare of the boys. It was finally defeated in court, and the arrangements made by Mr. Bloch received unqualified professional and judicial approval. In this one instance, the suffering was checked and recovery begun. The boys are thriving and their many friends, so far as one can judge now, have done as well as possible in providing for their welfare.

The situation of Morton Sobell has not improved, unless it can be said that criticism of the flimsy case against him and the conduct of FBI and prosecuting officials in dealing with him has begun to have an effect which will finally help him. The prison authorities are still acting questionably. Though no one has suggested that he is recalcitrant, he is confined in the grimmest of federal prisons, Alcatraz, which—by the direction of Congress and the Justice Department's regulations—is for recalcitrant prisoners. He is not in Lewisburg, where he would be treated in a more human fashion, and where he would be nearer his Eastern lawyers and his wife and two children. His request to be taken to Lewisburg, where Greenglass is kept safe, though Remington was murdered there, has been denied, and he stays in Alcatraz.

As the Rosenbergs were offered their lives for a "confession" up to the moment of their execution, so it appears that Morton Sobell is being offered better conditions, or perhaps even freedom, for a price. If his sentence had been Greenglass's fifteen years, he would be about ready to apply for parole. If it had been Fuchs's fourteen years, he would be eligible for parole. His sentence is thirty years, and he will not be eligible for parole for some five years more. In the meantime, there is much that the Department of Justice could do in improving his lot or developing a favorable attitude toward parole.

The Department appears to be ready to do something for a price. Three times since August 1954 an FBI agent has visited Morton Sobell in Alcatraz. The first time, the agent told Mr. Sobell that those who appeared to be working on his behalf had really no such interest. The second time, the agent said: "You can no longer hurt or help the Rosenbergs. Why don't you begin to think about yourself, and your own future?" The third time the agent assured him that he was forgotten by everyone, and that he was uselessly sacrificing his youth, his home, and his hope of seeing his children.¹

The methods which succeeded with the Greenglasses and failed with the Rosenbergs are still in use.

¹ Letter from Mrs. Sobell to Mr. J. Edgar Hoover, printed in translation in Varlin et Guyonnet (eds.), *Le Chant Interrompu*, pp. 275-277 (1955).

17

Patterns of Hostility

WHATEVER the innocence or guilt of the Rosenbergs, the case discloses, in microcosm, some features of our society which are worth considering in their relation to the case. The Rosenbergs were affected by influences from many sources. The action of these influences not only in the case but elsewhere as well raises questions of policy.

While Whittaker Chambers had strong personal motives for making his statements about Alger Hiss in 1939 and 1948, he appeared at each time as a "repentant" ex-Communist, atoning for his guilt, and making his reconciliation with his society. The Greenglasses, Gold, and Elitcher were not visibly "repentant"; they were simply against the Rosenbergs.

The Greenglasses and Elitcher (and Mrs. Elitcher and the Abels) were all represented during the case by members of the firm of Mr. O. John Rogge. There was in the legal profession, once at least, a considerable measure of confidence in Mr. Rogge's integrity, though in many quarters considerable mistrust of his judgment, which led him at one time to take what was perhaps a somewhat uncritical view of Soviet Russia. Partly perhaps by way of reaction, Mr. Rogge seems to have become strongly anti-Russian. My belief in Mr. Rogge's integrity was one factor in the confidence, however skeptical, that I originally had in the verdict, as distinct from the sentence. Mr. Rogge's remarks

in the record in connection with David Greenglass's sentence show, however, a strong sense of satisfaction with his own part in the case. They suggest the familiar theme of atonement and reconciliation.

Moreover, the discovery of the contents of the pretrial memoranda from his files, and particularly David Greenglass's own memorandum, raises some doubts whether at the outset he was not put on warning about his clients' reliability. He was, of course, entitled to represent them but not to participate in framing a case which he knew to be based on perjury. It is, however, quite consistent with confidence in Mr. Rogge's integrity to suppose that he was himself misled. So far as we know, he did not have occasion or opportunity to see much of his clients between the first days when arrangements were made for their cooperation with the FBI and the time of the trial.

There is room for doubt about Mr. Rogge's philosophical and political position; but he may stand, in the microcosm of the case, as he appears to some, for a kind of liberal. Liberals, particularly on the two seaboard, sometimes appear to be more alarmed than anyone else about the domestic Communists, and more eager than anyone to disassociate themselves from Communism. A great spectrum of liberals, represented for example by both Mr. Rogge and the New York office of the American Civil Liberties Union, and so by the Union itself, were against the Rosenbergs.

At first sight, the influence of anti-Semitism in the case seems to be canceled out. However one views the case, whichever side one takes, the principal heroes and the villains were all members of the Jewish community: the Rosenbergs, the Greenglasses; Mr. Cohn and Mr. Saypol; Judge Kaufman; Mr. Emanuel Bloch and his father, Mr. Alexander Bloch; Morton Sobell and Mr. Edward Kuntz and Mr. Harold Phillips, his lawyers at the trial.

Nevertheless, as many observers must have seen, the fearful influence of anti-Semitism has in these days combined with an old tradition in the Jewish community to produce a familiar result. It is one of the traditions of this sturdy minority to keep itself free from legitimate reproach, to purge itself vigorously of those who bring any warranted criticism upon themselves and so, however illogically and unjustly, upon the group. This tradition, coupled with fear of the facile and baseless association of Jews with "radicals," may lead members of the Jewish community to identify too readily the threat from within the community with particular representatives of the community. The Greenglasses at least confessed, and even Ruth Greenglass must have suffered some for her acts. The process may not be logical, but one can understand the impulses which may have led Jewish prosecutors and Judge to be particularly hard on members of their community. From the point of view of the American national community, the Rosenbergs took on some of the characteristics of scapegoats. How much more must this have been true in the Jewish community, under the constant pressure of primitive group hostilities, one can readily judge.

Mr. Cohn and Mr. Saypol rose in the Democratic organization in New York City, and Judge Kaufman cannot have been free in his earlier days from the effects of its power. The single personal influence which most affected their careers locally must have been that of the late Mr. Edward Flynn, boss of the Bronx and campaign manager for President Roosevelt's third term campaign, probably the most influential working Democrat in New York City politics in the '30s and '40s. Mr. Flynn was an outstanding representative of a kind of Democrat who was subject to the influence of lay and ecclesiastical associates who regard the "war" against Communism as a holy war, and who seem to think that any means are justified by the end of weakening Com-

munism. Mr. Roy Cohn, like his father, is a product of the Bronx organization. He is a curious symbol of the forces that united his former boss, Mr. Flynn, with his later employer, Senator McCarthy.

It must be remembered that the case was begun under Attorney General J. Howard McGrath at a time when the Republicans were using the Hiss case as a means of preparing for their victory in 1952. More important, the Rosenbergs' arrests occurred soon after the outbreak of the Korean War and after a dramatic winter in the history of atomic weapons, and the trial took place while there was still an acute military situation in Korea.

In June of 1953 Mr. Kilsheimer, the junior member of the original team of three principal prosecutors (not counting Mr. Lane), was the only one of the three still in the office of the new Republican United States Attorney for the Southern District of New York, Mr. Lumbard. Mr. Cohn was with Senator McCarthy, and Mr. Saypol had become a Justice of the New York Supreme Court (not the highest court of the state, which in New York is called the Court of Appeals).

The FBI was still the same, still part of the Attorney General's organization in the Department of Justice in Washington. Lawyers holding over from the McGrath and McGranery administrations were still in charge of reviewing the Rosenberg case in the Department, and representing the United States in opposing our motions in the Supreme Court.

Nevertheless there was a new United States Attorney in New York and a new Attorney General in Washington. Their training, experience, and character led one to hope that they would be independent in handling the case and in advising the President about the exercise of his powers of clemency.

Of all the members of the new administration, Mr. Lumbard must have had the principal responsibility for advice about the merits of the case. Though busy himself, he alone could have had the time for an independent study of the record. He undoubtedly studied the record, though how independently no one will ever know. He is able and honest. He must, in the nature of the case, be ambitious; and ambition, as John Adams has brilliantly explained,¹ may have various effects on a judgment as honest as a man can make it. In our conversation, Mr. Lumbard implied politely that I had been fooled about the case. I took the position, I fear somewhat less politely in the end, that he was the one that had been fooled. He was courteous enough not to rub in his experience in criminal cases as a prosecutor. If he had done so, I could only have relied on my own sense of fact.

Dr. Harold C. Urey, who tried vainly to see Mr. Brownell, might certainly have contributed to the Attorney General's sense of fact. It is, in my view of the case, an honor to science and a reflection on members of the legal profession (including myself) that Dr. Urey alone among non-participants saw early and clearly, and in sound perspective, those features of the case which, once seen, must trouble anyone who has a sense of proof and justice. His advice might even have corrected the influence of those lawyers in New York and Washington who must have affected the advice given by Mr. Lumbard and Mr. Brownell which in turn must have largely determined the final decision of the President.

Confessed Communist spies, liberals, and New York organization Democrats helped doom the Rosenbergs. A new

¹ See A Defence of the Constitutions of Government of the United States of America against the Attack of M. Turgot (1787 and 1788), in Volumes 4, 5, and 6 of Works of John Adams (C. F. Adams ed., 1851), for example Volume 4, pages 406-407, with some selected quotations in my paper on The Classical American Doctrine of "The Separation of Powers," 2 University of Chicago Law Review 385, 397-406 (1935).

Republican administration not only refused them clemency, but fought with domineering force for an immediate and ill-considered decision on the last problems of the case in the courts.

In the end the principal responsibility in the case is that of the courts. A student of the biography and character of judges may be interested in determining where in our microcosm the judges in the case belong: Judge Kaufman; Judges Frank, Swan, and Augustus Hand; the Roosevelt Justices in the Supreme Court; the one Republican, Mr. Justice Burton; the other Truman Justices. We cannot do more than make the suggestion.

The relationship between the executive and administrative branches of government on the one hand and the courts on the other appeared in interesting though somewhat obscure form in this case.

People connected with the Atomic Energy Commission have implied in conversations that they had information which did not appear in the record, proving the guilt of the Rosenbergs. They have indeed, many of them, access to the reproduction of the sketch of the cross section of the bomb and explanatory material, which was "impounded," on motion of the defense, at the trial. Whatever the considerations which led to this action, it goes to the limit in keeping important evidence off the public record in a public trial.

The evidence, however, if the references to it in the record are accurate, cannot prove the Rosenbergs' guilt. It may throw some light on the question of David Greenglass's ability, with the access to information which he had, first to make and five years later to reproduce his sketch of "the bomb itself." It may throw helpful light on the possible usefulness of such a sketch. Resolving all possible doubts

on these points against the defendants, the sketch and its secret characteristics would not, however, modify our discussion of guilt. We have assumed, for purposes of discussion, at various critical points, that the physical sketch in the impounded part of the record was like what it was said to be, and that it was of a sort which could have been useful up to the limits of anything that David Greenglass's training and experience qualified him to make. As the sketch has not been made public, we are warranted in retaining doubts on both scores; but they have not controlled our discussion. What we are saying is itself a warning of the risks to the democratic administration of justice which would be entailed by a general decision that secrecy in some critical trials is required by the need for security in an atomic age. When we contemplate the possibility that secret information of whose very existence we do not know may have influenced not only the executive but the courts, we are given further pause.

Representatives of the government are reported to have informed interested foreigners that there was more evidence of guilt than appeared in the record. Executive and administrative officers appear to be impressed with the off-the-record evidence. If the Atomic Energy Commission and other administrative and executive agencies were convinced that they had their own significant evidence in the Rosenberg case, their representatives doubtless talked about it. In the whispering gallery which is part of Washington, their talk was doubtless given circulation. A great case in Washington is like a great case in a small town. A judicial officer may close his eyes and ears and avoid the papers, but he will still know what the factions are saying.

The Rosenbergs were affected by a variety of deep and pervasive hostilities. These hostilities in the normal course produced rumors; and the rumors increased the hostilities.

The resulting phantasies were there. In the '20s and '30s, it was one of the tenets of the fashionable "realistic jurisprudence" of the times that off-the-record influences on administrative and judicial decisions must be recognized and accepted. We must indeed recognize their presence in many cases. Whether they affected decisions in the Rosenberg case is not certainly known, perhaps even to those who made the decisions. But the nature of the possibilities in a case like this in times like these is a reminder that "the facts" appearing in a record have in some ways at least a significance of their own, different from the meaning of other facts. If personal freedom and integrity are to be protected, the other "facts"—those off the record—require recognition for what they are, and submission to appropriate tests and examination.

In one view of the Rosenberg case which must seem to anyone in my position at least defensible, the critical decisions represent a gamble on the chance of absolute injustice on one side, and the prevention of a critical threat to imperiled security on the other.

If the Rosenbergs were not only innocent, but unjustly executed, it was an absolute injustice. It was an execution for political opinion. It was an execution under pressure for speed from the executive, without an opportunity for testimony by witnesses about significant facts, and without time for thoughtful briefing, argument, and deliberation on a number of difficult problems. It was an execution of parents, involving for their two children not only orphaning and shock but what will pass in parts of the community as disgrace.

On the other side, an estimate of peril to the national community inevitably played its part. Coolness and accuracy in making this estimate not only were important for the

Rosenbergs and the values related to simple justice. The estimate affects vital features of our policy, both domestic and international.

Assume for the present, what no one knows, that the deterrent effect of such a punishment, even when contrasted with the lenient treatment of others, is considerable. Was the peril such that it was needed? Was there, in fact, the spy threat which is part of our world, whether fact or folklore? The question was doubtless important for the Rosenbergs. As it affects our views on freedom and control, war and peace, it is also important for us.

One thing may be noticed at once. Serious espionage in a number of cases has been admitted or confessed; and it has been punished where that was possible in a way appropriate for a community which, while it doubtless employs espionage agents, must in turn oppose espionage designed to lessen some of its military advantages. The most significant cases have been, on a scale ascending sharply toward the end, the Greenglasses, Gold (as a courier), Allan Nunn May, Pontecorvo, and Fuchs.

Whittaker Chambers and the trial of Alger Hiss for perjury with respect to espionage in the late '30s have also contributed to our estimate of the spy peril. What the facts of that case were is still a matter of controversy. At the time of his statements made in 1939 and 1948, Chambers had both the motives and the materials of a confessed accomplice. His marked literary talent, which enabled him to write what is at least a brilliant psychological novel, is at first persuasive and then perhaps an occasion for doubt. His strong sense of guilt, atonement, and reconciliation led him at one point, in dealing with the pumpkin papers, to say that he was using Communist tactics—which are sometimes called "Jesuitical" tactics—against Communism. At another point, in relating his attempt at suicide, he expressed, in

religious terms, his willingness to be damned for the sake of his mission.

There were some effective Communist labor leaders in the '20s, but Chambers does not discuss their work. He uses his skill to give importance to intraparty maneuvers which, as anyone will remember who knew the labor movement in that time at all, had in fact about the significance of maneuvers within the British Communist Party of the present day. The effective literary craftsman is a master not only of the vivid detail, but of the heightened effect.

On the other side, one would have liked to know or at least see the two wives. One of them told and the other supported a vivid and complicated story of personal events in a rather distant past. Mrs. Chambers's testimony was in the nature of the case more complicated than the inconsistent story to which Mrs. Hiss gave support. The issue of social relationships was a collateral one, somewhat like the console table in the Rosenberg case, but it also had a significant relationship to the central issues of perjury and espionage.

On those issues there is the important "immutable witness" in the case, "immutable" as was no witness in the Rosenberg case, the typewriter. The reasons, if they can be so called, assigned by Chambers for the use of the typewriter when the conspirators had microfilm equipment and used it, are implausible. The source of much of the typewritten information in offices other than Hiss's, specifically in two other offices where espionage is independently known to have occurred, raises serious difficulties. The misuse of the expert testimony about the typewriter by Mr. Thomas F. Murphy in his summation, like the misuse by Mr. Saypol of the testimony about the table in his summation, raises grave misgivings. Yet on the evidence in the trial record Hiss's typewriter was used in preparing the documents in Chambers's possession, and that evidence, it seems to me, has not

been adequately explained; though imagined explanations may be less unlikely than Hiss's guilt. We do not know, but this brief reference to the other great American "espionage" case will serve, as at least our discussion of the Rosenberg record will serve, to keep us alert to the problems of proof which may arise in cases arousing political passions.

What is clear on Chambers's own account in *Witness* is that Hiss's espionage, if it occurred, was inconsequential in its effects. This observation does not of course affect our judgment about the case. If the espionage occurred, the punishment for the perjury may well be appropriate. But it does affect our estimate of the peril, and the fear which has been created for various purposes by those who have exaggerated the threat to our security disclosed by Chambers.

Chambers himself says he could not read the papers which he transmitted or kept, because they were so uninteresting and—apparently—insignificant. He even joked with his superior, Bykov, about Bykov's interest in papers. He makes nothing of their use in getting our code which has figured in public discussion. In his entire book, he tells of two cases of weapon espionage, both hearsay. One is the melodramatic story of the Christy tank and the Irish Republicans. The other is a repeated and matter-of-fact reference to a metallurgist in a steel plant, who, though said to be known, has not been proceeded against in committee or in court, for reasons about which one can only speculate. "Nero," and possibly "Abel Gross," may have been near sources of weapon espionage, but we are not told just what they did.²

² Since this was written, David J. Dallin's *Soviet Espionage* (1955) has been published. It recounts the somewhat routine story of Soviet espionage between the wars, resembling the story of European espionage from the days of Dreyfus on; an occasional brilliant and courageous effort, like that of the Schulze-Boysen—Harnack group in Germany, during the war of 1939; and the return to more routine activities since that war. Taken with

The espionage to which David and Ruth Greenglass and Gold confessed is, by contrast, serious. Gold in particular, as courier for Fuchs, may have played a part in weapon espionage of considerable gravity. But the effort to represent David and Ruth Greenglass (in supposed association with the Rosenbergs) as the equals of Fuchs, as having transmitted "the secret" of the atomic bomb, as having "caused" the Korean War, could only distort our judgment about the Rosenberg case, and exaggerate alarm about the extent of the domestic peril to our national security as well.

Here domestic policy relates to foreign policy. As compared with the Democrats, President Eisenhower—if not his administration—offers one great constructive change in policy. He shows serious determination to try new means of diverting our energies and resources to constructive activities and away from military organization and equipment. Partly by tax saving, partly by financing world-wide constructive activity, he proposes to make our lives more reasonable and humane. He shows serious determination to try new means to moderate "the prejudices, ambitions and hatreds" between nations, which prevent them from serving their rational interests.

Both to serve this purpose, and to protect us in case of its failure, he counts on our strength and the strength of our allies. The Rosenberg case caused great concern abroad, par-

Mr. Reuben's study, considered on p. 205, Dr. Dallin's treatment of the Canadian spy episodes, not only before the Royal Commission but before the courts, indicates the need for a full and critical account of this phase of recent Canadian history. Dr. Dallin's study of the American experience is marred by confident statements that people who have not been indicted for anything, and others who were prosecuted for other offenses and sometimes not convicted of those, were guilty of espionage. The treatment of the Hiss and Rosenberg-Sobell cases shows little independent study of them. Nevertheless Dr. Dallin indicates clearly, and notices explicitly, the limited character of Soviet espionage effort and achievement.

ticularly in France and Italy, not only in Communist and Socialist circles, but in conservative and Catholic circles as well. The concern was not altogether uninformed, for the record had been reprinted by the Rosenberg committee, and widely sold. There was a striking mark of our interest in foreign opinion on the matter toward the end of the week before the Rosenbergs' execution. Mr. Douglas Dillon, our Ambassador to France, presumably with the approval of the State Department, made it known publicly that he had advised our government against the execution. The expediting of the execution at the end of the next week may be explained most rationally by our concern for the same opinion. Delay would doubtless have caused the critics of our government's action in the case to repeat their criticisms and win new critics to their side. We may have sought to minimize our loss of support abroad, while accepting, as a result of the execution, some increase in the European tendency to mistrust our judgment and balance in dealing with the problems created by the atomic cold war.

There is, however, a more striking tension between the judgments which must have decided upon the execution and the judgments which seem to be determining what may prove President Eisenhower's characteristic contribution to American life and the welfare of the world. The success of the President's foreign policy will depend not only on maintaining our strength and the strength of our allies. If it is to succeed fully, it will depend also on controlling the fears and hatreds which have created the endless wars of the human species. Anything which increases American fear and hatred of the Russians and their well-wishers, beyond what is warranted by a cool examination of the facts, can only be an obstacle to the unparalleled achievement which the President seeks on our behalf.

Against these general considerations, the deep and largely unexplored passions associated with the Rosenberg case made the tragedy of the community and of the victims as well. The Greenglasses, confessed spies, were treated as though they had repented, atoned, and by bowing to our opinions made their peace. The Rosenbergs, asserting their innocence, were punished so severely in the end partly because they would not assert their guilt or deny their unpopular political philosophy.

They were personal symbols of the vague objects of our fears and our hatreds. They were subject to our power and at the mercy of our destructive impulses and capacities, as those political and national groups which we felt to be hostile to us were not. We moved from the war against Germany and Japan, even before it was over, to the cold atomic war, and so to the war against North Korea. While our policy may have had popular support, destruction and the threat of destruction on so large a scale inevitably produced a widespread sense of guilt, however deeply it may have been submerged.

There is a human belief widely distributed in primitive and civilized societies alike, that evil, sin, and guilt may be put upon some object, animal, man, king, or god, and then disposed of by its or his destruction or death. In the particular magical and religious myth of this type prevalent in our own society, the thief is released at the multitude's request, and the king and savior is killed. He is addressed as "Thou that takest away the sins of the world." However wide the divergences between the literal scapegoat, the Aztec human victim, and the central mystery of the Christian Church, the similarity is there also. The varied rites of different peoples express a deep and pervasive scheme of emotions and a common view of things. It is impossible to suppose that they are wholly unrelated to the rite of capital

punishment. The kinship is clear when one observes the reactions of people to capital punishment for what is treated as a great offense against the state in wartime.

Beneath all the rational justifications, plausible or implausible, we symbolize our fear and hatred of the enemy, and our guiltlessness of violence, by the death of these victims. It is they who have "caused" the Korean War, not we. The Greenglasses have "caused" it also, no doubt, but they are confessed and undoubted criminals. As in many, though not all, cultures, we sometimes prefer that our scapegoats should be superior human beings. In integrity, and by any test in fortitude, the Rosenbergs, simple as may have been some of their beliefs, seem to have been superior persons.

This made them fit subjects for sacrifice. It may be hoped at least that the sacrifice has accomplished an unacknowledged purpose. Perhaps, as the sacrifice of the scapegoat came in many cultures to be associated with the course of the year and the periodic expectation of spring and revival, so this sacrifice may somehow reduce our horrors to manageable size, and prepare for reconciliation, peace, and growth.

APPENDIX i

Fabricant-Rogge Interoffice Memorandum on a Conference with David Greenglass¹

MEMO

TO: FILE, 11:45 A.M. 6/16/50.
FROM: HJF,

RE: DAVID GREENGLASS

After conferring with OJR and the subject's brother-in-law, Louis Abel, this morning at our office and pursuant to telephone call made by OJR, I visited the offices of the FBI on the 6th floor of the Federal Building where I spoke with Mr. Whelan, apparently the Agent in charge.

He told me that Greenglass was down the hall and that I could see him and that he had signed a statement indicating that he had met Harry Gold and that he had transferred information to Gold.

He further told me that the matter was being taken up with the Department of Justice and that the probability is that a complaint will be filed in Albuquerque, New Mexico charging conspiracy and advised me that I could see Greenglass if I wished. I told Whelan that we did not represent him as yet and I wanted to see him in connection with finding out what this was all about and whether we would represent him.

He permitted me to see Greenglass on the basis of OJR's

¹ From Sobell v. United States, Transcript of Record, on unsuccessful petition for certiorari to review orders denying a new trial on the record as made in the Rosenbergs' final motion, in which Sobell had joined, p. 86. The records on petitions for certiorari to review the conviction and the denial of the first motion based on the conduct of the trial are supplemented by this later record. All are in print. OJR is Mr. O. John Rogge, HJF is Mr. Herbert J. Fabricant, of Mr. Rogge's firm.

phone call and OJR's statement that we had been requested to represent Greenglass.

I then was taken to a room down the hall where I was introduced to Agents Frutkin and L [sic], who were in an office with Greenglass. After shutting the window I was told that I could see him alone if I wished but that they would prefer to have a man present. I asked Greenglass what he would prefer and he said he would rather see me alone whereupon the agents left the room but kept the door open. Greenglass confirmed that he had given a statement that he had met Gold for an hour, that he had given him some information concerning the names of people who would be sympathetic but he thought that Japan was the enemy and Russia was an ally and there was no reason why information could not be given. He had told the FBI that he received \$500 from Gold.

He told me that he had made a number of confusing statements purposely in order to confound the FBI and to draw attention from his wife who is in the hospital. His wife apparently originally told him that his brother-in-law, Julius Rosenberg, had suggested this (and so I fail to see how his mind operated in connection with keeping his wife out of the picture).

He told me further that Julius Rosenberg is apparently very close to this whole situation. Julius Rosenberg had once introduced him to a man in a car somewhere in New York who apparently made this request. He does not know if the man was a Russian and told the FBI that he didn't know.

APPENDIX 2

*Handwritten Statement by David Greenglass
for the Rogge Office¹*

Saturday, June 1950.

These are my approximate statements to the F.B.I.

1. I stated that I met Gold in N. M. at 209 Hick St. [N. High St.], my place. They told me that I had told him to come back later because I didn't have it ready. I didn't remember this but I allowed it in the statement. When he came back again I told him [sic] that I gave him the envelope with the stuff not expecting payment and then he gave me an envelope. Later I found that it contained \$500.

2. I told them that on a visit to me in Nov. 1944 my wife asked me if I would give information. I made sure to tell the F.B.I. that she was transmitting this info from my brother-in-law Julius and was not her own idea. She was doing this because she felt I would be angry if she didn't ask me.

I then mentioned a meeting with a man who I didn't know, arranged by Julius. I established the approximate meeting place but no exact date. The place was a car, an Olds owned by my father-in-law, at somewhere above 42nd St. on 1st Ave. in Manhattan. I talked to the man but I could recall very little about which we spoke. I thought it might be that he wanted me to think about finding out about H. E. lenses used in experimental tests to determine data on the A bomb.

I made a general statement on my age, etc.; you know, the usual thing.

I mentioned no other meeting with anyone.

One more thing, I identified Gold by a torn or cut piece of card, but I didn't tell them where or how I got it. Also, I defi-

¹ From Sobell v. United States, Transcript of Record, p. 84. June 17, 1950, was a Saturday.

nitely placed my wife out of the room at the time of Gold's visit.

Also, I didn't know who sent Gold to me.

I also made a pencil sketch of an H. E. mold set up for an experiment. But this I'll tell you, I can honestly say the information I gave Gold may be not at all what I said in the statement.

APPENDIX 3

Army Signal Corps, Hearings Before the Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate, Eighty-third Congress, November 24, 1953 (pp. 18-23)

STATEMENT OF O. JOHN ROGGE, AN ATTORNEY

MR. [ROY M.] COHN. You are a member of the bar of the State of New York, and admitted to practice in the Federal courts, is that correct?

MR. ROGGE. That is right.

MR. COHN. And you have represented various witnesses before this committee, is that correct?

MR. ROGGE. I have.

MR. COHN. Mr. Rogge, have you for a number of years acted as counsel to David Greenglass?

MR. ROGGE. I have.

MR. COHN. And did you have occasion to talk with David Greenglass in recent weeks?

MR. ROGGE. Yes, I did.

MR. COHN. Would you describe that for the committee?

MR. ROGGE. The circumstances were these: In the investigation which this committee is conducting into espionage, the clients whom I represent, of whom David Greenglass is one, will cooperate with the committee. Pursuant to that position, various representatives of the committee—yourself, Mr. Cohn, and Mr. Schine, and Mr. Carr—and I went down to Lewisburg and conferred with Mr. Greenglass. I conferred with him first, and he indicated that he was willing to cooperate.

I think that I should add in fairness to David Greenglass that he has cooperated with the Government almost from the beginning, and he is continuing that cooperation.

Pursuant to that position, both you and Mr. Schine ques-

tioned him, and Mr. Carr took notes. Afterward, those were reduced to written form, and questions and the answers which David Greenglass made were submitted to him, and he went over them, and I have a copy of those questions and answers. I can say to you that they correctly represent questions that were asked of David Greenglass, and answers that he gave.

MR. COHN. We want to thank you very much, Mr. Rogge, for your cooperation with the committee and the trouble which we have occasioned you with that trip to Lewisburg.

Mr. Chairman, Mr. Buckley, assistant counsel for the committee, has produced here the sworn affidavit of David Greenglass, accompanying the questions and answers which have been referred to by Mr. Rogge, and I wonder if I might read them into the record at this time.

THE CHAIRMAN [SENATOR JOSEPH R. MCCARTHY]. I think that is an excellent idea.

MR. COHN (reading).

COMMONWEALTH OF PENNSYLVANIA,

County of Union, ss:

David Greenglass, being duly sworn, deposes and says:

I have read the attached interrogatory consisting of four type-written pages and I incorporate everything contained therein in this affidavit.

I have placed my initials and the date on each of the attached four pages.

I have carefully read each question and each answer which appear on the attached four pages and I declare that the questions were those that were asked of me and the answers were that which I gave [sic].

DAVID GREENGLASS.

Subscribed to and sworn to before me this 22d day of November 1953.

G. W. HUMPHREY, Warden.

Authorized by the act of February 11, 1938, to administer oaths.

Interrogation of David Greenglass conducted at the United States Penitentiary, Lewisburg, Pa., October 1953.

Q. What is your name?

A. David Greenglass.

Q. You realize a subpoena has been sent to you in care of Warden Humphrey?

A. Yes, I do.

Q. Have you talked with your attorney, Mr. Rogge?

A. Yes, he was up here and I told him I would cooperate.

Q. Are you incarcerated in Lewisburg Penitentiary?

A. Yes. I am serving a 15-year term.

Q. For what?

A. Conspiracy to commit espionage.

Q. Did you plead guilty in Federal court, New York, to conspiracy to commit espionage in which Julius Rosenberg and others were involved?

A. Yes, I did.

Q. Did you yourself give atomic secrets to Rosenberg and to Harry Gold for transmission to Russia?

A. Yes. When I was stationed at Los Alamos at the atomic bomb project, I passed sketches and other information on the bomb to Rosenberg and to Gold at their request.

Q. After you were discharged from the service and left Los Alamos did you have occasion to learn anything further about the espionage activities of the Rosenberg ring?

A. Yes, I was told more.

Q. Under what circumstances?

A. Rosenberg and I went into the metal goods manufacturing business together in New York in 1946. While we were together, Rosenberg told me certain things about the secrets and material they stole for Russia. Also around the period after Harry Gold's arrest, when Rosenberg was trying to get me to leave the United States and go to Russia, I found out more from him about those involved in the ring.

[MR. COHN]. I think the public record shows that that was 1950.

Q. Did you learn if there was espionage in the Army Signal Corps?

A. Yes; I learned that there was espionage in the Army Signal Corps. I learned that the Rosenberg ring took and obtained secrets from the Army Signal Corps and transmitted them to Russia.

Q. Will you give us some of the details concerning your knowledge of espionage in the Signal Corps?

A. Yes. Rosenberg told me that the Russians had a very small and a very poor electronics industry (this is, of course, another name for the radar industry) and that it was of the utmost importance that information of an electronics nature be obtained and gotten to him. Things like electronics valves (vacuum tubes), capacitors, transformers, and various other electronic and radio components were some of the things he was interested in.

Rosenberg also told me that he gave all of the tube manuals he could get his hands on to Russia, some of which were classified "top secret."

[MR. COHN]. I think, Mr. Chairman, you will recall from Colonel Lotz' testimony that vacuum tubes and tube manuals were worked on at Evans Signal Laboratory and its contractors.

THE CHAIRMAN. That is right.

MR. COHN (reading):

About 1947, at a time when it was a top United States scientific secret, Julius Rosenberg told me about information he had obtained from a friend relating to a thinking machine which would send out interceptor guided missiles to knock out an enemy's guided missiles which had been detected by our radar and its course predicted by our thinking machines. Rosenberg was discussing this information with me, as I said before, when it was a top American scientific secret.

THE CHAIRMAN. I think the record should show that the term "thinking machine" is a term applied to certain radar devices.

MR. COHN. That is correct, Mr. Chairman.

THE CHAIRMAN. That is the term that is used in the Signal Corps.

MR. COHN (reading):

Of course, it must be remembered that Rosenberg was employed by the Signal Corps during World War II and worked at Fort Monmouth and at other places which were working on prime or subcontracts for the Signal Corps such as the Emerson Radio Corp. At one time, too, Rosenberg was an inspector for the Signal Corps.

After the war when Rosenberg and I were in business together in New York, Rosenberg used his Signal Corps contacts in attempts to obtain contracts for Pitt Machine Products and the G. & R. Engineering Co.

[MR. COHN]. That is the Greenglass & Rosenberg Engineering Co.

[Reading]. As a matter of fact, Julius made a number of trips to Signal Corps officials in Philadelphia for this purpose.

Once when I questioned Julius about the necessity of the frequent Philadelphia trips, he answered that not only were the trips necessary for company business but also because he had to see his espionage contacts.

I also recall that in New York City there was a purchasing agent in the Air Corps whom Julius had met in the Signal Corps sometime earlier when both were with the Signal Corps. Julius was in contact with this individual and went to see him regularly.

Q. Did Rosenberg tell you anything about working on the proximity fuse while he was at the Signal Corps installation at Emerson?

A. Yes. Rosenberg told me that while he was employed for the Signal Corps at Emerson he stole the proximity fuse and gave it to the Russians.

Q. Did Rosenberg tell you exactly how he accomplished this theft?

A. Yes. Julius told me that it was his practice to bring his lunch to work in a briefcase. He said that he was actually able

to place a proximity fuse in the briefcase and walk out of the Emerson plant with it.

Q. Did Rosenberg tell you what he did with the proximity fuse once he had stolen it?

A. Yes. He told me that he handed it over to a Russian agent.

Q. Was Rosenberg the only member of the ring who committed espionage in the Signal Corps?

A. No. There were others.

Q. Would you give us details on what you know about the others?

A. Yes. There was Joel Barr. He worked out at Fort Monmouth with the Signal Corps and later he worked with Sperry Gyroscope in Lake Success, N. Y. Julius, at this time, was trying to get me to leave the country, hoping that I would not be caught and thereby expose the spy ring. When I differed with Julius on the method of leaving the country, he said that I should leave via the port of New York, taking a steamship to France.

When I remonstrated with Rosenberg saying that this was not a very good method since I would be under the eye of the FBI and the State Department, Julius said that more important people than I had left by this route. When I asked who they were, Julius said "Joel Barr, for one." Julius had told me that Barr was one of those who had given him information on electronic apparatus. Rosenberg then mentioned that he had gotten the information on the thinking machines from Barr.

Originally Julius had said that Barr had gone to Belgium to study music.

Julius said that there were others who gave him information relating to electronics. For example, he once told me that he had an espionage agent at General Electric who, like all of his other espionage agents, were not members of Communist cells.

On one occasion there was a telephone call from a man whose voice I did not recognize. The caller asked for Julius. I told the caller that Julius was out on business and I told him when Julius could be expected back. When Julius returned I told him about the call and from the facts I related to him, he

immediately recognized the caller. A little later the telephone rang again and Julius answered. After Julius hung up he told me that he had to go out to meet the caller who was waiting on the corner, the call having been placed from a nearby telephone booth. I started to go out with Julius, being curious and wishing to see what the caller looked like, knowing from the mysterious circumstances surrounding the call and Rosenberg's reaction to it that the caller was one of Rosenberg's agents. Julius, however, did not want me to go, saying "I do not want you to see this man, so stay in the shop." Julius did not return to work that day.

Q. When did the operation of the Rosenberg ring which had as its purpose the obtaining of radar secrets for Russia stop?

A. As far as I know these operations never stopped and could very possibly be continuing to this very day. When I was with the ARMA Co.—

[Mr. COHN]. which Colonel Lotz has named as a Signal Corps contractor, Mr. Chairman—

during 1949 and 1950, working in their research and development department on various fire control gyroscopic and radar apparatus, Julius asked me to obtain information on the projects upon which I was working. I refused.

THE CHAIRMAN. Mr. Cohn, I think in connection with the ARMA Corp., the record should show that Mr. Greenglass gave the committee additional leads concerning present employees of ARMA. Those witnesses that have been before the committee, and those uncovered through the information which Mr. Greenglass gave indicate considerable evidence of Communist activity on the part of present employees.

Mr. COHN. That is right, and the last question in here makes it clear there is additional information which Mr. Greenglass gave to the committee which we are in the process of tracking down, and calling in witnesses concerning it. And Mr. Greenglass has said that he will be available when that information has been developed, and we can go back there and complete that picture.

Q. Do you know Vivian Glassman?

A. Yes, I do.

Q. Under what circumstances did you meet Vivian Glassman?

A. I first met Vivian Glassman after the war, around 1946. I met Vivian at Julius' and Ethel's apartment where I was told that she worked for some kind of a board that dealt with backward children. I believe she was employed as a secretary. Vivian, Ethel, and Julius were exceedingly friendly. When, for example, Ethel had to go out Wednesday afternoons on her mysterious business, Vivian took care of the Rosenberg children.

I also met Vivian down at our shop. Joel Barr had some radio equipment and some photographing equipment at our shop. Barr was also building an electronics apparatus of some kind in the shop. Vivian would come to the shop to meet Joel and they would eventually leave together. I later learned from Julius that Joel and Vivian were keeping company together.

Q. Did you believe Vivian Glassman to be a member of the Rosenberg spy ring?

A. After Julius Rosenberg told me about Joel Barr, I knowing about the relationship between Joel Barr and Vivian Glassman, came to the conclusion that Vivian Glassman was involved in some way.

[MR. COHN]. Mr. Chairman, the records, of course, indicate that Vivian Glassman had been employed during the war at Fort Monmouth, and as soon as her health permits she will be a witness before this committee. She has been heard in executive session, as you will recall.

THE CHAIRMAN. In view of the fact that Vivian Glassman's attorney informs us that her health will not permit her being present before the committee tomorrow, she having been subpoenaed for tomorrow, I think the record should show that she was before the committee in executive session and was asked whether or not she was a part of the Rosenberg spy ring, and she refused to answer on the ground that a truthful answer might tend to incriminate her, and she was asked about

many other activities in connection with espionage at Fort Monmouth, and asked about her connections with people at Fort Monmouth as of today, and connection with some of those who were suspended. And in all of those cases she invoked the fifth amendment. Is that roughly correct, Mr. Cohn?

MR. COHN. That is exactly correct, Mr. Chairman.

Q. With reference to some of the other information which you have given to Mr. Carr, Mr. Cohn, Mr. Schine, and Mr. Buckley, of the subcommittee staff, will you be agreeable to answering questions in the near future?

A. I am willing to answer any questions and give any information that I may have if in so doing I can help my country and its authorities in exposing what has been done by way of giving Russia our secrets.

[MR. COHN]. That concludes the deposition, Mr. Chairman.

May we have this received in evidence and made a part of the record in these proceedings?

THE CHAIRMAN. It will be received and made a part of the record.

(The affidavit and deposition referred to were marked "Exhibit No. 1 (a) and (b).")

THE CHAIRMAN. I think the record should also show, Mr. Cohn, that you and Mr. Carr and Mr. Schine and Mr. Rogge spent 2 or 3 hours with Mr. Greenglass, and that Mr. Buckley the other day spent an additional 6 hours with him, and that there is considerable information given by Mr. Greenglass which is outside of this affidavit; that you did not include the names of people in this affidavit whom we have had no opportunity to call; and I think after they have all been called and all of the leads run down given by Mr. Greenglass, it may well be important to have Mr. Greenglass testify down here in executive session.

We have a great deal of difficulty with working that out, and it will be necessary to have him confront certain witnesses to know whether he recognizes them. We cannot very well take

them to the Federal penitentiary at Lewisburg. And there is some reluctance, and I can understand why, on the part of the Justice Department to have him produced here in New York. I think we should proceed to work out some arrangement whereby we can arrange the necessary confrontations between Greenglass and the various witnesses whom he has named.

MR. COHN. We will take that up with the Justice Department.

APPENDIX 4

*New Light on the Rosenberg Case*¹

I

Two recent books dealing with the Rosenberg case present somewhat similar, though not identical, views of this climax in the recent drama of domestic Communism.² The books are both favorable to the defense, though they take a position which the defense refused to take during the conduct of the case. Each book is warmly appreciative of and friendly to defense trial counsel, and each author appreciates that, quite apart from the merits of his position, it is one which defense counsel could not practically have adopted during the case. Each author tends also to minimize a certain inconsistency between his position and the position which defense counsel took, particularly in the course of the final motions for a new trial.

Mr. Reuben spends a large portion of his book in outlining the course of the leading spy cases, beginning with the publication of Gouzenko's accusations in 1946, and their relationship to the Canadian cases, and continuing through the Rosenberg-Sobell cases. It is Mr. Reuben's view that the excitement over the spy cases was deliberately exaggerated throughout and was a principal means of bringing on the cold war. His book is a valuable stimulus to observation of the relationships between the cold war and the spy scares.

Nevertheless, on its own dating it is in two respects unconvincing. In my opinion, at any rate, the cold war began at least as early as May of 1945; and it originated, as all the never-ending cold wars of history have originated, in the mutual hostilities of leading communities. Truman attacked Molotov

¹ Reprinted from *Monthly Review*, December 1955.

² William E. Reuben, *The Atom Spy Hoax*, Action Books, New York, 1955, \$3.75; and John Wexley, *The Judgment of Julius and Ethel Rosenberg*, Cameron and Kahn, New York, 1955, \$6.00.

on the Polish situation when Molotov was on his way to the first San Francisco United Nations meeting. While the Polish issue was temporarily adjusted by Hopkins and Stalin, disagreement and mistrust over eastern Europe at the London Conference in September 1945 were the occasion for the persistence of the conflict which many had expected, on one ground or another, between the two leading powers of the world.

In the second place, it seems to me that the first spy scare in Canada and the relatively mild first domestic Communist scare in the United States can be explained without resort to a theory of deliberate provocation on the part of a ruling group. Each was much like the scare over the Milwaukee Germans that, as a one-time resident of Wisconsin, I can remember from 1917 and 1918. Though all these scares were doubtless used by those whose interests and passions were already committed to conflict, each was in its origin a spontaneous and irrational reaction to foreign affairs. At a certain point, indeed, it is difficult not to see the appearance, say in 1948, of something which looks like a provocative conspiracy of the "right." The most unreliable characters imaginable—Budenz, Chambers, Miss Bentley—were used by equally undependable characters who for a time had more public following.

While I thus disagree with Mr. Reuben's view of the part played by the spy scare in the cold war, and with his account of the origins of the spy scare, it will be seen that I share Mr. Reuben's opinion that it was in part deliberately exaggerated, and his opinion that it made some contribution to the fury of the cold war. It will also be seen that I am, as I have indicated publicly from the beginning, a skeptic about the State Department's theory of the cold war. If I could be convinced that atomic espionage was simply a "hoax," it would support my general position about the cold war, but it is not a necessary element in that position, and in any event I find I must separate the evidentiary problems about espionage from the evidentiary problems arising in connection with the Truman-Molotov conference of April 1945, and the London Conference of September 1945.

II

On the evidentiary problems about the spy scare in general, Mr. Reuben deserves respectful consideration. Historians, political scientists, and students of law will need to come to his presentation with an open, as well as a critical, mind. He is committed to a position, and the need for a critical mind will be apparent at the start. His first part deals with the Canadian cases. He reminds us of the acquittals and reduces the convictions to their natural size. He is more skeptical about the confession of Allan Nunn May than is Mr. Wexley, who fully shares Mr. Reuben's and Dean Wigmore's doubts⁸ about the dependability of confessions in general. Mr. Reuben is writing argumentatively. His bias perhaps appears most clearly in a much later chapter where, in dealing with an alleged American spy, Alfred Dean Slack, he presents the defense position, together with a citation to the report which gives a clue to a court's strongly reasoned contrary view, which, however, he does not present.

This is the defect of enthusiasm. The critical reader will need to resist at every point the tendency to say that here is an omission, or here an overargued point, and so there can be nothing to the case. If he falls into this logical error, he will miss a position which should be well considered. Mr. Reuben and Mr. Wexley between them have presented facts, together doubtless with some errors, which are unpalatable. I consider them at least as safe guides as those writers, including some of professional stature, who fell into the accepted standard pat-

⁸ The late Dean Wigmore, the outstanding authority of his generation on the law of evidence, expressed his doubts as late as 1931 by means of a quotation from an English treatise, *Best on Evidence*, in the second edition of *Principles of Judicial Proof*. On the other hand, in his *Treatise on Evidence*, third edition, 1940, Dean Wigmore presents a view more favorable to the usefulness of confessions, and distinguishes the plea of guilty, which, as he observes, is and must be generally acceptable. If the curious reader will follow the references in *Best on Evidence* to English witchcraft cases, he will find—in my judgment—ample support for the points made by Mr. Wexley about the dangers in uncorroborated confessions, whatever their technical form.

terms of the spy scare in the cold war, as historians and lawyers of stature fell into standard patterns about the war of 1914, many of which have been universally recognized as subject to discount and correction.

III

While Mr. Reuben devotes somewhat more than half his book to the Rosenberg-Sobell cases, Mr. Wexley writes throughout about these cases. The theories of the two books are similar, though they differ in some interesting respects.

Both writers insist that there is no adequate evidence that any atomic espionage whatever took place in the sequence of events which were treated at the trial as constituting the Rosenberg-Sobell cases. Both draw attention to the late Dean Wigmore's warnings about the use of uncorroborated confessions as evidence of guilt. Among other things, Dean Wigmore has reminded us that in witchcraft trials people confessed to doing things which, according to modern views, are impossible. Dean Wigmore and the authors remind us also of the extraordinary tendency of people to turn up with spurious confessions, particularly after reports of notorious crimes, and of the care which in ordinary cases policemen take in acting on such confessions. The authors of the two books remind us that we depend on confessions for our view that any atomic espionage took place. Allan Nunn May's uncorroborated confession was the basis of his conviction, although Mr. Reuben treats it more skeptically than does Mr. Wexley.

Both Mr. Reuben and Mr. Wexley raise grave doubts about the reliability of the confessions of Fuchs, Harry Gold, and the Greenglasses, which are the basis of the proceedings against the Rosenbergs. Dr. Fuchs is a first-rate physicist, a German naturalized in England, who confessed there to espionage, some of it in the United States, in the course of his work as an atomic scientist. Gold confessed to serving as Fuchs' courier in the United States. He also confessed to getting information from David Greenglass about a detonating device on which David Greenglass was working as a machinist, under scientists, at Los

Alamos. David Greenglass and his wife confessed to giving this information to Gold, and implicated the Rosenbergs in arrangements for its transmission. They also confessed to giving the Rosenbergs general information about Los Alamos and a report and sketch of the Nagasaki bomb—in view of David's competence, presumably of its mechanical features. They accused the Rosenbergs of soliciting this information.

Both Dr. Fuchs and Harry Gold are men of marked emotional instability. There is virtually no reliable evidence that either was ever a Communist, or—except for some business associations of Gold—even in association with Communists. Fuchs had relatives who may have been Communists, and this circumstance, and Gold's business dealings with representatives of Amtorg, may well have given them a sense of vulnerability. David Greenglass was a person with less marked pathological traits, but he appears to have had his share of personal instabilities as well. He is said to have told people, whether or not it was true, that he had engaged in a theft of uranium (perhaps only a souvenir) while he was at Los Alamos, and there is testimony suggesting that he had engaged in other thefts there. All three were subject to fear, and the pressures which fear, combined with police investigation, may induce.

The mutual corroboration of the various stories is far from perfect. So far as public reports of Fuchs' confessions go, he is not known to have admitted any acts of espionage in this country except in the Boston and New York City areas. The published reports are strikingly silent about New Mexico, which is the location of the alleged Fuchs and Gold meeting in the Gold-Greenglass story. Moreover, such corroboration as exists may be explained by the processes of suggestion, however well-intended, by the FBI, and invention by those who were trying to please the FBI as their stories developed.

There is again, as both authors point out, an implausibility in some of the episodes: for example, Gold's quite unnecessary and uncharacteristic registration at the Hilton Hotel on the occasion of his supposed visit to the Greenglasses at Los Alamos. There are some internal inconsistencies in the stories: for exam-

ple, the different dates which Gold ascribes to his espionage activities. There are inconsistencies between the stories and the public statements of the FBI: for example, the stories about the conditions under which Gold's first confession was made. There are suspicious circumstances about what we know of the evolution of the stories: for example, the circumstance that Greenglass testified at the Rosenberg trial that the name of Gold was, so far as he could recall, not even mentioned at his first interview with the FBI on what became the Rosenberg-Sobell story.

Both writers, who seem to have cooperated at one stage in the development of their theories, make these various points with varying degrees of emphasis. In the case of Mr. Reuben's book, one has to guard against skepticism induced by what may seem overargument about various instances of items of the same sort, at some points in the book. At times Mr. Reuben appears to be reading conspiracy indictments and trial testimony as a lawyer might read a financial instrument or a common law pleading. Nevertheless, the force of some of his points, fairly considered, cannot be affected by the circumstance that he makes others less good. Mr. Wexley's book is much better written, both as a story and as an argument. Yet one may feel, after studying them both, that Mr. Reuben has been somewhat less carried away by his case.

These observations bring us to the defects of both cases. One weakness is brought out by a document, or series of documents, which was used by the Rosenbergs' lawyers, Mr. Bloch and his associates, as one of the grounds for their final motions for a new trial. The documents include, in particular, what purports to be a handwritten statement by David Greenglass, made some thirty hours after he was first questioned by the FBI, about his supposed espionage. This document turned up under unexplained circumstances in the hands of a French lawyer, in 1953, and its authenticity was and is recognized by Mr. John Rogge, the Greenglasses' lawyer, from whose files it is thought to have come. It speaks rather convincingly about David Greenglass' meeting with Gold. It has, on the other

hand, only two references, each of which could easily have been quickly suggested or invented, to any supposed participation in espionage by the Rosenbergs. Particularly noteworthy is the absence of any connection between the Rosenbergs and the more dramatic features of the story which the Greenglasses and Gold were to tell at the trial. The reader will perhaps remember that no one except the Greenglasses connected the Rosenbergs with atomic espionage; and that the only other evidence of anything like espionage of any kind on their part was the very peculiar testimony of a confessed perjurer named Elitcher, principally to attempts at clearly non-atomic espionage.

David Greenglass' so-called pre-trial memorandum, partly corroborated and partly not corroborated by what purports to be a memorandum of one of the lawyers in Mr. Rogge's office made after his first interview with Greenglass, is the most serious difficulty for the view that no atomic espionage whatever occurred. This memorandum is the beginning of the story told at the trial by David Greenglass which does most to corroborate Gold's confession that he engaged in espionage, which in turn is the only corroboration that is known to exist of Fuchs' confession that he engaged in espionage. The sequence is indeed a long one, and none too conclusive.

The character of the testimony given by David Greenglass and his wife, Ruth Greenglass, seems to me to be some slight further corroboration of the participation of Gold and the Greenglasses, and so perhaps of Fuchs, in some kind of espionage. David Greenglass is less unbalanced than Gold and Fuchs, but on the other hand he appears also to be very much less intelligent. It seems doubtful whether, even after some months of association in "singing quarters" with Gold, and many conferences with the FBI, a person of David Greenglass' ability could have stuck so closely to his story, if there had not been a core of truth in it. At the same time, as Mr. Wexley clearly brings out, and as I have thought since June of 1953, the story as a whole, taken with the pre-trial statement, also shows signs of being pieced together in a way which suggests

complete unreliability. In particular, so far as it implicates the Rosenbergs, there appears to be no reason whatever to trust it.

Besides the pre-trial statement and—more doubtfully—the character of the testimony, another circumstance which is some evidence at least of the Greenglasses' guilty activities is played down by both writers. This is David Greenglass' possession, at the time of his arrest, of \$4000 with which he paid a lawyer's fee. The Greenglasses testified that he got the money from the Rosenbergs. Since the Rosenbergs apparently never got a nickel of cash for themselves, this testimony is subject to grave doubt. Mr. Wexley thinks Greenglass must have got the money from his black-market operations and from his family. The black-market operations are, however, not well established by the evidence, and one's first thought is that his family—which is also the family of Ethel Rosenberg—could hardly have stood by while he told such a notable lie about this particular item. David Greenglass was, however, a favorite of his mother; and it may be that the family was not alert to all aspects of the case, and was disposed to let it take its course. The appearance of the \$4000 remains a suspicious circumstance. Those who think the Greenglasses and Gold and Fuchs were probably guilty, and the Rosenbergs innocent, explain the money by the continued interest of people who never appeared—perhaps the Russian Yakovlev who had left the country after the time of the supposed espionage and long before the arrest of any of those who appeared in the case at its trial in New York in 1951.

The Greenglass pre-trial statement is the most serious single difficulty with the theories of Mr. Reuben and Mr. Wexley. It connects Greenglass with Gold, and so it perhaps connects them both with Fuchs in a story of espionage which appears to have had some reality. Neither Mr. Reuben nor Mr. Wexley faces this difficulty squarely. Each deals with it differently. Mr. Reuben disregards the pre-trial memorandum entirely; and Mr. Wexley, while he publishes it as an appendix, uses it when it helps his argument and overlooks its inconsistency with his

argument. It is unfortunate that neither author dealt with the problem it presents.

For there is a possible reconciliation between the mass of evidence which leads Mr. Reuben and Mr. Wexley to doubt the Fuchs, Gold, and Greenglass confessions, and the troublesome but slight and almost solitary opposing evidence of the pre-trial memorandum. If the student thinks not of days but of hours he will observe that those first simple statements were produced during a considerable period. The frightened and confused Greenglass was with the FBI for some twelve hours before he signed his first statement at about 2 o'clock on a Friday morning. That day he gave his lawyer, according to Mr. Fabricant's memorandum, an oral statement. This statement, in its account of his relations with Gold, apparently differed from that which he signed for the FBI, differed even more clearly from that in the pre-trial memorandum, and differed most strikingly from the testimony of both the Greenglasses at the trial. The same Friday, Greenglass was arraigned and Mr. Rogge asserted his innocence. The following day, Saturday, at least thirty hours after the end of his interrogation by the FBI, he wrote the pre-trial memorandum. What confusions or stratagems or both may have operated in those thirty hours, and in the preceding twelve hours with the FBI, we do not know. Was he simply inclined to cling to parts of the pattern of the story as it first formed in his mind? Was he trying to persuade his own lawyers of his reliability? Was he preparing a means of escape as an addition or alternative to the implications of others? Whatever the uncertainties, the lapse of time, once it is recognized, is sufficient to destroy much of the value of the Greenglass memorandum as a corroboration of Gold's confession. At the same time, the two slight and easily suggested or invented references in it to the Rosenbergs, about matters on which Julius Rosenberg did indeed later testify that he was questioned on Friday morning, take on new meaning. The inconsistencies between these references and the Greenglasses' testimony at the trial can now be seen more clearly, and they cast some further doubt on the

dence, at most, of a much less serious offense, which hardly justifies a sentence twice as severe as that given to the confessed atomic spy, Greenglass. When the sentence is compared with the absence of any proceedings against another confessed atomic spy, Ruth Greenglass, it is still more striking. When the sentence of thirty years' imprisonment is carried out at Alcatraz, designed for intractable prisoners, and remote from Sobell's family and lawyers, and when it is accompanied by an effort to make Sobell "talk," the character of the proceedings casts further doubt on the responsibility of those who have been in charge of the Rosenberg-Sobell cases.

The Sobell case is the outstanding example of the serious lasting effects of the spy scare. No one claims that Sobell was shown to have had anything to do with atomic espionage. The perjured and unprosecuted Elitcher, on his own testimony another accomplice, gave the evidence on which the judge told the jury Sobell's conviction must depend. The evidence is questionable on a number of grounds, but at worst it connects Sobell with taking a "35 millimeter film can" to Julius Rosenberg. In addition, Sobell in 1950 went openly to Mexico, and there for a time used other names. Many troubled people left the country at that time, and no one has contended that his trip alone would justify his conviction. If he had Fuchs' sentence of fourteen years, Sobell would be eligible for parole today. If our government has recaptured its sanity, it will at least see that he has his parole. That is a test of our recovery from our recent excitements.

Both the books under discussion have first-rate examinations of the Sobell case. Whatever doubts one may have about the authors' treatments of Fuchs, Gold, and Greenglass, their books are in general accurate, careful, and persuasive in their discussion of the Rosenbergs' cases. They are equally good in their treatment of the Sobell case. If one must choose, Mr. Wexley's is the more dramatic. Together they should help us prepare at least to do what we can to right the existing wrong to Mr. Sobell, and in doing so to vindicate as far as possible our own intelligence, humanity, and courage.

Office Memorandum • UNITED STATES GOVERNMENT

SECRET

TO : Director, FBI

DATE: August 2, 1956

FROM : Legal Attache, London (65-915)

SUBJECT: JULIUS ROSENBERG, with aliases
ESPIONAGE - R ALL INFORMATION CONTAINED
(Bufile 65-58236) HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE. Classified by 2355
MORTON SOBELL, was;
ESPIONAGE - R Exempt from GDS, Category 2
(Bufile 101-2483) Date of Declassification Indefinite

SECRET

Bertrand Arthur William Russell

ReBulet 4/11/56 instructing that discreet inquiries be made to determine the facts concerning BERTRAND RUSSELL's arrest and imprisonment during World War I. By Legat London letter 6/29/56 the Bureau was informed that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

An examination was made of newspaper archives at the British Museum, London, England, by Assistant Legat J. PHILIP O'BRIEN. Memoranda summarizing information obtained are attached hereto.

Enclosures (3) Memoranda (3) copies each

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CC: 65-0-281 (RUC)
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INDEXED-4

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Classified by 3042
Declassify on: OADR
10/24/86

SECRET

APPROPRIATE AGENCIES
AND FIELD OFFICES
ADVISED BY ROUTING
SLIP (S) 7-6-79
DATE

55 AUG 14 1956

SECRET

101-2483 = 1



United States Department of Justice
Federal Bureau of Investigation

Washington, D. C.
July 27, 1956

Re: BERTRAND RUSSELL

The following is quoted from the Encyclopaedia Britannica, Volume 19, 11th Edition, 1929, respecting captioned individual:

"During all this period Russell lived very simply and worked very hard. He and his wife had moved to a small house near Oxford, but he often went abroad, and from time to time, as when Mr. Chamberlain started his tariff reform campaign, abandoned philosophy for politics. In 1910 he was appointed lecturer at his old college. After the World War broke out he took an active part in the No Conscription fellowship. He was fined £100 as the author of a leaflet describing an early Christian conscientious objector. His library was seized to pay the fine; it was bought in by a friend; but many valuable books were lost. His college deprived him of his lectureship. He was offered a post at Harvard university, but was refused a passport. He intended to give a course of lectures (afterwards published in America as Political Ideals, 1918) but was prevented by the military authorities. In 1918 he was sentenced to six months' imprisonment for an article he had written in the Tribunal. His excellent Introduction to Mathematical Philosophy (1919) was written in prison."

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ON 10/24/86

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ENCLOSURE

65-5823C-2279



United States Department of Justice
Federal Bureau of Investigation
Washington, D. C.
July 27, 1956

Re: BERTRAND RUSSELL

The following is an excerpt from "Pictorial Biography" of
BERTRAND RUSSELL, O.M., by H. W. LEGGETT, published 1949, page 27.

"His support probably did more than any other single cause to make the movement as effective as it was. In September, 1916, he addressed a Fellowship convention in London where he received a tremendous ovation. He was by that time in the middle of the fight to secure their legal rights for conscientious objectors, and had already been fined £100 with £10 costs at the Mansion House for his part in the affair of a St. Helens school teacher named Everett, a conscientious objector who had been handed over to the military by the Tribunal, despite his strongly held religious convictions, and sentenced to two years' penal servitude.

"Six men had been sentenced for distributing a leaflet dealing with the case and published by the No-Conscription Fellowship, when Russell wrote to The Times acknowledging authorship and insisting that if anybody were prosecuted it should be he. At the hearing he defended himself and when fined refused to pay, with the result that his belongings at Trinity College, Cambridge, were distrained on. He was deprived of his lectureship in consequence of his conviction.

"In 1918 he was sentenced to six months in the second division on account of an article he wrote describing the shooting down of strikers by the American army. During his imprisonment he wrote a letter to Lady Constance Malleson in which he said that life in prison was very much like life on an ocean liner: 'One is cooped up with a number of average human beings, unable to escape into one's own stateroom. I see no sign that they are worse than the average, except that they probably have less will power, if one can judge by their faces. . . .'

"On appeal to Quarter Sessions the sentence was varied to imprisonment in the first division and there Russell wrote his 'Introduction to Mathematical Philosophy,' which was published in 1919, the year in which he unsuccessfully opposed Bonar Law for the Lord Rectorship of Glasgow University. While he was in prison,

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ON 10/34/82

ENCLOSURE

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every page he wrote had to be read by the Governor before it went to the publisher, and that individual is reputed to have given himself some bad headaches over the manuscript, of which he scarcely understood a word."

~~SECRET~~



United States Department of Justice
Federal Bureau of Investigation

Washington, D. C.
July 27, 1956

Re: BERTRAND RUSSELL

The following newspaper items are quoted from "The Times" on the dates indicated:

September 2, 1916:

"The Honorable Bertrand Russell was yesterday served with a notice from a competent military authority forbidding him to enter any prohibited area."

September 5, 1916:

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CS 10/24/86

"Sir,

"Mr. Bertrand Russell's view of pre-war diplomacy is not mine, and it is very far from yours; nevertheless, I hope the Times will allow me to protest against the military edict which forbids him to reside in any part of Scotland, in Manchester or Liverpool, or on the greater part of the English coast. Such an edict is obviously aimed at a man who may justly be suspected of communicating with the enemy, or of assisting his cause. Mr. Russell is not only the most distinguished bearer of one of the greatest names in English political history, but he is a man so upright in thought and deed that such action is, in the view of everyone who knows him, repugnant to his character. It is a gross libel, and an advertisement to the world that the administration of the Defense of the Realm Regulations is in the hands of men who do not understand their business.

"Incidentally, their action deprives Mr. Russell, already debarred from entering the United States, of the power of earning his livelihood by arranged lectures on subjects unconnected with war. The Times is the most active supporter of that war; but its support is intelligent, and it speaks as the mouthpiece of the country's intelligence as well as of its force. May I therefore appeal to it to use great influence to discourage the persecution of an Englishman of whose accomplishments and character the nation may well be proud, even in the hour when his conscientious conclusions are not accepted by it.

"Yours,

/s/ H. W. Massingham
London, Sept. 4, 1916."

SECRET

65-58236-2279

October 21, 1916:

"Sir -

"I have read a letter in the Times of today from Mr. Bertrand Russell complaining of the restrictions placed on his lecturing activities by the War Office. He appears to have the support in the House of Commons of a few members of a certain type, including some who have been repudiated by their constituents, and are unlikely to reappear after dissolution. It is worth remembering, when the action of the military authorities is challenged, that Mr. Bertrand Russell was, about 4 months ago, convicted of an offense under the Defence of the Realms Regulations, the offense consisting of making statements likely to prejudice recruiting. For this offense he was fined £100. He appealed to the Quarter Sessions and the conviction was upheld. The War Office authorities are not singular in the view they take of Mr. Bertrand Russell. He has, I understand, been recently deprived of his Lectureship at Trinity College, Cambridge, by the governing body of the college.

/S/ J. G. Butcher
House of Commons, Oct. 20."

October 27, 1916:

"Sir, -

"Will you allow me to correct a misapprehension which is liable to arise out of Mr. Herbert Samuel's answers in the House of Commons on October 19 and 25 as regards the Government's refusal to permit me to go to America? No correspondence has passed between me and any government on this subject. The only communication of which I have any knowledge is a letter from our Ambassador in the United States to the President of Harvard stating that a passport could not be granted to me because of my conviction at the Mansion House under the Defense of the Realm Act. This letter was dated June 8, at a time when the Mansion House decision was still subjudice, as I had appealed to the Quarter Session. - - -

/S/ Bertrand Russell,
Oct. 26."

February 11, 1918:

"MR. BERTRAND RUSSELL SENTENCED.

~~SECRET~~

"Mischievous Words in an Article: Insult to the U. S. Army

"At Bow Street Police Court on Saturday (February 9) . . . the Honorable Bertrand Arthur William Russell . . . and Miss Joan Beauchamp . . .

were jointly summoned for having in a printed publication called the 'Tribunal' made certain statements intended and likely to prejudice his Majesty's relations with the United States of America - contrary to Regulation 27 (b) of the Defense of the Realm Regulations.

"Mr. Humphreys (Prosecutor) - - - said that the 'Tribunal' was a four-page paper, and in the issue of January 3, 1918, the front page was taken up with an article headed 'The German Peace Offer,' by the defendant Russell. The paragraph complained of was in the following terms: -

'The American garrison will by that time be occupying England and France, whether or not they will prove efficient against the Germans, will no doubt be capable of intimidating strikers, an occupation to which the American Army is accustomed when at home.'

"The prosecution contended that that statement was intended and likely to prejudice his Majesty's relations with the U.S. A statement of that sort was certainly likely to cause trouble and disagreement and mutual antagonism between the soldiers of this country and those of one of our Allies, and thus to prejudice the relations of the two countries, It was very hard to understand how such a passage could have been written by any person who was not directly hostile to this country, and it was difficult to overstate its possible mischievous effects if it were allowed to pass unchallenged. What did the suggestion that an American garrison would shortly be occupying England and France mean if not that the British and French armies would not be able effectively to defend their countries, and that it was necessary to have here, not the assistance of an Ally to fight the enemy, but a garrison in this country and in France provided by America? Following upon that sneer at the Armies of Great Britain and France, there came an insult to the American Army in the words, 'whether or not they will prove efficient against the Germans. . . .'

"Then came the words, 'They will no doubt be capable of intimidating strikers, an occupation to which they are accustomed when at home.' The first observation to be made on that was that it was untrue; the second observation was as to the impression that would be created among the citizen soldiers of this country if they believed for an instant that the Army of another democratic country could in any conceivable circumstances be used here for the purpose of taking part in any labour troubles that might arise.

"CASE FOR THE DEFENSE

~~SECRET~~ "Mr. Whiteley submitted that there was no ground for the inferences which the prosecution had attempted to draw from the passage quoted.

Mr. Russell absolutely denied that in writing it he had any intention of prejudicing the relations of his Majesty with the United States; his purpose was the very opposite. . . . The article was not an editorial, but a signed contribution, showing that the views expressed were merely those of the individual writer, and it was idle to pretend that the personal opinions and sentiments of anyone man, whatever his position, were likely to prejudice our relations with a foreign State. . . .

"Mr. Humphreys (Prosecutor) mentioned that in June, 1916, at the Mansion House, Mr. Russell was convicted on a similar charge, and was fined £100 and £10 costs.

"Sir John Dickinson (Judge) said that the words of the article complained of stood self-condemned as mischievous, and there was no doubt in his mind they were calculated to prejudice his Majesty's relations with a foreign power. Mr. Russell seemed to have lost all sense of decency and fairness, and had gone out of his way to insult, by a deliberate and designed sneer, the Army of a great nation which was so closely allied to us by ties of affection and kindred. . . . The offense was a very despicable one and although the sound sense. . . of humor of the Americans might treat his libel with the contempt it deserved, there were some people who would eagerly seize those false assertions and use them for the injury of the cause to which we are devoting our lives and our treasure. . . . The sentence upon him will be six months imprisonment in the second division.

"Notice of appeal . . . was given."

May 2, 1918:

"MR. BERTRAND RUSSELL'S APPEAL

"At London Sessions yesterday, the Hon. Bertrand Russell appealed vs. a sentence of 6 months imprisonment in the 2nd division, passed on him at Bow Street Police Court for making statements in an article in a paper named The Tribunal intended and likely to prejudice his Majesty's relations with the U. S. of A.

"The Bench disallowed the appeal, but ordered the imprisonment to be served in the first division instead of the 2nd."

~~SECRET~~

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI (65-58236)

FROM : SAC, NEW YORK (65-15348)

SUBJECT: JULIUS ROSENBERG, was, ET AL
ESPIONAGE-R

DATE: 8/6/56

ReBulet 6/18/56.

Revised

The book entitled "Was Justice Done?" by MALCOLM P. SHARP, Professor of Law, University of Chicago, with an introduction by HAROLD C. UREY, MARTIN A RYERSON, Distinguished Service Professor, Department of Chemistry, and ENRICO FERMI, Institute of Nuclear Studies, University of Chicago, was reviewed as instructed in referenced letter. A Brief on the contents of the various chapters in the book is attached herewith. A copy of the book has been previously forwarded to the Bureau.

2-Bureau (65-58236) (RM)
1-New York (65-15348)

RTH:pjm
(3)

ENCLOSURE

EX-109

*Index title only
per 8/22/56*

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INDEXED - 91

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INTRODUCTION:

A Layman's View of the Case - HAROLD C. UREY

UREY recommends Professor MALCOLM P. SHARP's objective and critical review of the ROSENBERG case to all thoughtful students and patriotic critics of American justice. He explains that he doubted the testimony of the GREENGLASSES as soon as he read the transcript of the trial and was convinced the ROSENBERG'S were not "guilty beyond a reasonable doubt." He later discussed the case with MALCOLM SHARP, who conducted an investigation himself after the ROSENBERGS console table was located and SHARP also became convinced that the GREENGLASSES committed perjury and that the ROSENBERGS were innocent.

UREY states that people have asked him why the Prosecutive Attorney, the FBI and Judge should wish to see two insignificant people put to death unjustly and UREY concludes that lawyers are more interested in the law and in seeing that all the legal machinery functions rather than in justice.

UREY brands the GREENGLASSES criminals and casts them in an alternate set of facts in which their Russian principal was YAKOLEV instead of JULIUS ROSENBERG thereby eliminating the ROSENBERGS from the espionage set up and concluding that the GREENGLASSES could have conducted the whole enterprise without the ROSENBERGS. UREY makes the astounding statement that the ROSENBERGS denied all accusations and never admitted any treacherous act; that had they done so, he, UREY would never have spoken one word in regard to the case. Apparently UREY would believe anything the ROSENBERGS said and a full confession would have convinced him of their guilt even though the GREENGLASSES, could have, according to his hypothesis, have committed the alleged espionage without the ROSENBERGS.

AUTHORS PREFACE

SHARP introduces a brief background of the individuals who participated in the activity of the conspiracy to commit espionage for which the ROSENBERGS were convicted and

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executed and states that he believed that the average intelligent citizen after considering the facts in the case, will doubt the justice of the conviction or agree that a new trial should have been granted on the evidence disclosed in the last defense motion. He states that the most remediable result of the case today is the imprisonment of MORTON SOBELL, who is serving a 30 year sentence in Alcatraz. SHARP recommends two other books which he believes after review, supplement his book, namely, WILLIAM E. REUBEN'S, "The Atom Spy Hoax" and JOHN WEXLEY'S, "The Judgment of Julius and Ethel Rosenberg." He mentions his association with the defense counsel in the closing stages of the appeals and states that during the last two and a half weeks of the case, working with EMANUEL BLOCH and GLORIA AGRIN, he came to think of them, together with Justices BLACK and DOUGLAS of the US Supreme Court, as symbols of justice in a time of difficulty.

CHAPTER I - THE UNEASY SPECTATOR

SHARP commences his book with a summary of the story of the atomic espionage conspiracy as executed by the GREENGLASSES and ROSENBERGS, and culminating in their convictions therefor. He notes the contrast between the sentences imposed on DAVID GREENGLASS and MORTON SOBELL as compared with ALLAN NUNN MAY and KLAUS FUCHS in Britain and contrasts the death sentence imposed on the ROSENBERGS "who steadfastly maintained their innocence", as disturbing to many people. He states that there was general recognition that the GREENGLASSES won leniency by implicating the ROSENBERGS, no proceedings ever being started against RUTH GREENGLASS.

Judge IRVING KAUFMAN is criticized for his statement "...your conduct in putting into the hands of the Russians the A bombhas already caused, in my opinion the Communist aggression in Korea, with the resultant casualties exceeding 50,000" when he sentenced the ROSENBERGS. SHARP states that combining as it does, an unsupportable view of both the history of atomic espionage and the history of the Korean

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outbreak with a retaliatory theory of punishment, KAUFMAN's statement is another factor in the disquiet an observer still unwilling to question the convictions feels about the wisdom of the sentence. He also is critical of the Supreme Court for failing to review the ROSENBERG's case citing the dissenting opinion of Justice BLACK as justification for his criticism.

SHARP states that although the trial reflected many questionable features, he was satisfied with the conviction although he had publicly and privately criticized the sentence, but about the middle of May, 1953, newly available evidence, induced him to revise his position. The newly discovered evidence was a console table located by a reporter for the newspaper "National Guardian" which had been mentioned by RUTH GREENGLASS as being a gift from the Russians to the ROSENBERGS. SHARP then proceeds on the supposition that if this were the only console table the ROSENBERGS ever had, it confirmed their testimony and disposed of the GREENGLASS testimony because it was a plain table without a hollowed out portion for a lamp to fit underneath it. SHARP then traces his affiliation with the defense following his reading in the "National Guardian" of the discovery of the console table because other evidence, which he does not mention, was appearing in various ways, which increased his doubt about the GREENGLASS' account of their own atomic espionage activities. The central purpose of the book thereafter appears to be to discredit the testimony of RUTH and DAVID GREENGLASS.

CHAPTER II

The Case - Conspiracy to Commit Atomic Espionage

SHARP allegedly sets out the strong points of the Government's case and describes the first act of espionage described by the GREENGLASSES occurring in November and December, 1944, when RUTH was planning to visit DAVID in Los Alamos and quotes RUTH GREENGLASSES testimony under direct and cross examination to indicate that she had memorized it. The arrangements to pick up the information DAVID was to obtain and have RUTH pass to a courier for transmittal to ROSENBERG are set out and mention of ANN SIDOROVICH as the proposed courier

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is made. SHARP mentions that ANN SIDOROVICH was listed as a Government witness on the Government's proposed list of witnesses although she was not called and that this sufficiently explains the defense's unwillingness to call her as their witness. DAVID's meeting with an unknown Russian arranged by ROSENBERG in New York City; HARRY GOLD's contact of the GREENGLASSES in Albuquerque and DAVID GREENGLASSES testimony regarding the cross section of the atom bomb that he gave ROSENBERG in September, 1945, are reviewed. SHARP is critical of the Government giving the impression that it had the dominant scientists in the country on its side by listing them as prospective witnesses and states that if the indictments had mentioned DAVID GREENGLASSES giving ROSENBERG a sketch of a cross section of the atom bomb, the defense would have been given notice, which it was not, that a line of proof was to be presented that required the presence of any qualified scientist it could find.

SHARP proceeds to criticize the testimony of the GREENGLASSES and HARRY GOLD stating that the memorized testimony as given by RUTH GREENGLASS must affect the impression given concerning the furnishing of information about Los Alamos and the giving of names of scientists working there; that during the nine months between DAVID GREENGLASSES arrest and through the Grand Jury proceedings and successive indictments until the day of his testimony on the subject, DAVID was in custody and zealous FBI agents and prosecuting officials were doubtlessly pressing him to give as much information as possible; that DAVID, RUTH and GOLD who was also in custody, organized accounts of events which would correlate with each other. He suggests that DAVID held back information on the cross section sketch of the atom bomb until he was assured of lenient treatment. GOLD's testimony is questioned as "accomplice" testimony and although GOLD was already sentenced at the time he testified, SHARP states that he was undoubtedly thinking ahead to parole. SHARP noted the facts as related by GOLD, are inconsistent with his testimony about principles of espionage that individuals engaged in espionage should know as few names of others engaged with him as possible and therefore the recognition signal of "I come from JULIUS," which served to link JULIUS ROSENBERG with the espionage activities is hard to believe.

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CHAPTER III

Rewards and Instruments

SHARP discusses testimony relating to the receipt by ETHEL and JULIUS ROSENBERG of the "citation," "watches" and "console table" which he states weakens the Government case and which in the light of the new evidence offered on the motion for a new trial, raises still more questions about the prosecutions case.

SHARP states the word "citation" suggests a document setting out a reference to what ROSENBERG had done and expresses disbelief that such a document would ever be given to anyone engaged in espionage.

SHARP also accuses SAYPOL of using a familiar device to build up a charge and transform it into proof in the Jury's mind's in his cross examination of the ROSENBERGS concerning the man's and woman's watch received by JULIUS and ETHEL ROSENBERG from the Russians.

SHARP devoted ten pages (49-59) to a discussion of the testimony concerning the console table which DAVID GREENGLASS testified JULIUS told him was received from the Russians. SAYPOL is accused of giving testimony because of the manner in which he cross-examined JULIUS ROSENBERG concerning the purchase of the table in that he quoted a price of \$85.00 as the minimum price of the table that ROSENBERG claimed he paid only \$21.00 for. SHARP comments that SAYPOL'S skill in developing the table evidence is a symptom of the degradation of criminal justice in metropolitan centers. He concludes the chapter with a reference to the same type of "rhetorical art" being used by ROY COHN in helping Senator JOSEPH MC CARTHY conduct his unsuccessful revolution against the Army, the Senate and President Eisenhower and a reference to the summation at the end of the second HISS trial by prosecutor THOMAS F. MURPHY in which MURPHY "created" a new theory in linking Mrs. HISS with the typing of documents on the HISS typewriter.

CHAPTER IV

Near Espionage and A Night Trip

SHARP states that the indictment and prosecution of the ROSENBERGS concerned acts other than those relating to atomic energy; that the charge was a conspiracy. He then continues, that no testimony was introduced tending to show MORTON SOBELL'S participation in atomic espionage and that although evidence against SOBELL with respect to other types of espionage is weak, he was nevertheless given a 30 year sentence. Note is made that MAX ELITCHER, the chief witness against SOBELL was in danger of perjury prosecution in falsely swearing that he was not a Communist on an application for federal employment; that he was not prosecuted and that on his own evidence, he seems to have been an accomplice of JULIUS ROSENBERG and MORTON SOBELL. Claim is made that the GREENGLASSES established JULIUS ROSENBERG as a sophisticated spy, accepted as a top member of a spy hierarchy, but that ELITCHER'S testimony if true, characterizes ROSENBERG as naive in making three unsuccessful espionage contacts with ELITCHER; that there is no reason however, even in the light of the jury's verdict, to think ELITCHER'S account is true and that his testimony is open to all the objections to accomplice testimony.

SHARP questions whether ELITCHER was not on his evidence an accomplice in a conspiracy separate from the atomic espionage conspiracy involving FUCHS and GOLD.

The three attempts of ROSENBERG to recruit ELITCHER and obtain information from him are set out and SHARP comments that "JULIUS ROSENBERG denied every alleged reference in his conversations to any espionage on his own part or on SOBELL'S part which could be drawn from ELITCHER'S testimony about his conversations with SOBELL."

SHARP noted that ELITCHER told his story about being surveilled from Washington, D.C. to SOBELL'S home in Flushing, Long Island and subsequently accompanying SOBELL on a trip to lower Manhattan where SOBELL visited ROSENBERG to deliver a 35 millimeter film can, only after furnishing two statements to the FBI and after an appearance before the

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Grand Jury which did not make reference to it. He finds implausible, ELITCHER'S testimony that SOBELL told him about JULIUS ROSENBERG'S remark about talking to ELIZABETH BENTLEY on the phone because of its too perfect introduction to and confirmation of BENTLEY'S testimony.

CHAPTER V

Flight

The flight of MORTON SOBELL to Mexico and his activities under various aliases while there are set out and reference is made to the notation "Departed from Mexico" written by JAMES S. HUGGINS, an immigration inspector, on the manifest when SOBELL was returned to the United States and placed in the custody of the FBI by Mexican Security Police. SHARP contends HUGGINS testimony tends to confirm the SOBELL'S accusation of their kidnapping in Mexico City and recalling the Sacco-Vanzetti and Mooney cases, he states that the illogical consciousness-of-guilt argument which seemed to have its effect in those cases, may have had considerable effect on the ROSENBERG jury even though the Judge warned in his charge, that flight, even if proved, does not show that a crime has occurred. He concludes that if one is "sufficiently skeptical" about ELITCHER'S reliability, this may appear to be the only evidence about SOBELL to support his conviction for violating the Espionage Act.

SHARP states that the case against SOBELL seems to have been made largely by psychological suggestion resulting from his association with the GREENGLASSES and the ROSENBERGS, while the case against the ROSENBERGS was somewhat strengthened by what was said at the trial about SOBELL.

Prosecutor SAYPOL is accused of supplementing the "flight" theme in his cross examination of JULIUS ROSENBERG regarding the exodus "to Sweden" of JOEL BARR, and of ALFRED SARANT, (whose name SHARP spells SAURENT) to Mexico. SHARP states there was no record in evidence that SARANT was in Mexico; that SOBELL'S trip and JULIUS ROSENBERG'S friends travels, would prove less than Judge KAUFMAN indicated in his

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charge, because "a considerable number of people, uneasy at the reaction and the threats of war in 1950 in the United States left the country."

Commenting on the \$4,000.00 that DAVID GREENGLASS received from JULIUS ROSENBERG for flight to Mexico, SHARP states that it would be easy to over estimate the corroboration which GREENGLASS'S brother-in-law, LOUIS ABEL'S testimony gives DAVID'S story about the \$4,000.00. SHARP insinuates that DAVID and not ROSENBERG could have been in the employ of the Russians and could have received a draft or similar transmission of funds to finance his trip to Mexico; that the GREENGLASSES were disposed to give questionable testimony about the ROSENBERGS and that their testimony about receiving the \$4,000.00 from ROSENBERG was in striking contrast to their known standard of living.

CHAPTER VI

Communism and A Note on the 5th Amendment

SHARP comments on the many references to Communism which "permeated" the record such as SAYPOL'S cross examination of JULIUS ROSENBERG and the items used in evidence such as the insurance policy in the International Workers Order; a Communist Party nominating petition and the Spanish Relief collection can (which he calls a cup) and expresses wonderment as to their tendency to prove anything with respect to the issue of the case, conspiracy to commit espionage. He expresses doubt that people who talk openly about their admiration for the Communist regime would be of any great use in an espionage organization, thereby exonerating JULIUS ROSENBERG. SHARP cites HISS who revealed no views favorable to Communism and ALLAN NUNN MAY and FUCHS as being above suspicion until shortly before their confessions.

CHAPTER VII

The Critics

SHARP states that STEPHEN LOVE of the Chicago bar, an early critic of the ROSENBERG verdict addressed a public

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meeting in New York on May 3, 1953, where he outlined his objections to the verdict, as well as his criticism of the sentence. He cites LOVE's most emphatic criticisms of the conduct of the trial judge, citing Judge KAUFMAN's unfriendly interpositions and marked displeasures against EMANUEL BLOCH and his father in the conduct of the trial. Criticism is also set out for the Court of Appeals for being unduly impressed with the courtesies exchanged between counsel and court at the end of the proceedings holding that EMANUEL BLOCH, ROSENBERG's lawyer may have gone farther than he otherwise would have as KAUFMAN still had to pass sentence on ROSENBERG and that BLOCH still had to represent the ROSENBERGS in KAUFMAN's court after sentence.

SHARP then sets out 14 points of criticism expounded by LOVE during his talk of May 3, 1953; cites objections set forth in a pamphlet by D. N. PRITT, a British lawyer and concludes with the original letter to the New York "Times" sent by Dr. HAROLD C. UREY, a shortened version of which was published on January 8, 1953.

CHAPTER VIII

Some Weaknesses in the Case as a Whole

SHARP states that accomplices, particularly unsentenced accomplices, have a peculiar temptation to save themselves at the expense of someone else; that inasmuch as they have participated in a crime, they have an account of a crime ready to use in their testimony and all they need to do in order to implicate an innocent person, is to change it in detail or add a character here and there in their story. Special motivations for DAVID GREENGLASS are cited such as his, "irrational" feeling that his sister and brother-in-law, had contributed to his becoming a spy for Russia; conflicts with JULIUS ROSENBERG over business matters; economic insecurity. SHARP states GREENGLASS' insecurity must have made him more open than he otherwise would have been to the opportunity which the "representatives of the Government" may well have given him to improve his condition by furnishing information about other alleged spies.

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Commenting on the statement of RUTH GREENGLASS given to her lawyers in which she stated DAVID would say things were so even if they were not, SHARP states DAVID GREENGLASS is a character whose early experiences have made him unreliable, "quite apart from the peculiar pressures to which he was subject at the time of his arrest and questioning by the FBI."

SHARP points out that the GREENGLASSES gave the serious testimony in the case, testifying to DAVID furnishing JULIUS ROSENBERG with the names of scientists at the Los Alamos project, to the episode of the lens mold; the cross section of the bomb itself; the flight episode; the ROSENBERG visit to his doctor. They also gave the testimony about the rewards and instruments of espionage which testimony shakes SHARP's confidence in their reliability because viewed in the light of "evidence" which later became available it bears the marks of fabrication on so elaborate and systematic a scale that it encompasses the prosecution. The ELITCHER and BENTLEY testimony are disposed of as "inconclusive," and tending to discredit the prosecution.

The SCHNEIDER episode also casts doubts on the good faith of the prosecution; the flight evidence, apart from the GREENGLASS testimony, appears inconclusive, if not discreditable; the conviction of SOBELL appears insupportable, and his associations with the ROSENBERGS in the case, and in part the testimony, are considered further elements of weakness in the case.

CHAPTER IX

The Three Motions

SHARP states that following the decision of the United States Supreme Court on November 17, 1952, not to review the judgment of the Court of Appeals affirming the ROSENBERGS and SOBELL's conviction, defense counsel made three motions, the first raising objections to the conduct of the trial and the other two raising objections to the sentence. Issue is taken with the decision of District Judge RYAN disposing of the

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defense objections concerning the statement of the photographer, BEN SCHNEIDER, that he had not seen the ROSENBERGS between the time when he took the pictures and the time he identified the ROSENBERGS in court, in that Judge RYAN thought the mis-statement was immaterial. Court of Appeals held that it was in fact hardly a mis-statement since the court understood it to mean that the photographer had not seen them between the time when he took their picture and the time of the trial.

Another objection made to the conduct of the trial is to the press release given by SAYPOL concerning the indictment of WILLIAM PERL for perjury during the ROSENBERG trial, in stating that PERL had been listed as a witness in the ROSENBERG trial and was to corroborate statements of DAVID and RUTH GREENGLASS. SAYPOL is accused of double dealing in denying at the time, that the indictment and press release were designed to affect the trial and subsequently pleading in answer to defense objection in its motion, that defense counsel did not move for a mistrial at the time. The District Court and Court of Appeals subsequently held that the absence of a formal motion for a mistrial was fatal to the defense.

CHAPTER X

Rewards and Instruments - New Evidence

SHARP attempts to discredit the entire testimony given by the GREENGLASSES through the console table brought forth by the defense in 1953, and alleged to have been the console table in the ROSENBERG apartment, described by the GREENGLASSES. He sets himself up as infallible in judging the trustworthiness of witnesses and claims that the examination of ROSENBERGS sister, ETHEL GOLDBERG and JULIUS ROSENBERG'S mother by EMANUEL BLOCH in BLOCH'S office in connection with their affidavits concerning the console table convinced him of their honesty. He is also convinced that EMANUEL BLOCH could only recall "vividly," one visit to the ROSENBERGS apartment and though BLOCH searched his mind concerning the existence of the table in the apartment he could not recall it, his mind being preoccupied with the welfare of the ROSENBERG children.

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SHARP discusses the argument between the defense and prosecution concerning the chalk or crayon markings on the console table used by the defense to attempt to obtain a new trial and concludes that he is warranted on the record of the case, in inferring that the table produced by the defense was the only console table that ever stood in the ROSENBERG apartment.

CHAPTER XI

Atomic Espionage - New Evidence

SHARP discusses the statement DAVID GREENGLASS gave his lawyer, O. JOHN ROGGE, concerning the information he gave the FBI when he was arrested. He quotes from the statement "I stated that I met GOLD in New Mexico at 209 Hick Street, my place. They told me that I had told him to come back later because I didn't have it ready. I didn't remember this but I allowed it in the statement." SHARP states concerning this quote that GREENGLASS did not say in so many words that he told the FBI that he did not remember the sequence as they gave it to him but it seems a fair inference that the FBI had encouraged him to embroider his story to make it more dramatic. He stated that the FBI was eager to have GREENGLASS tell more about espionage and his co-conspirators and that the FBI was perhaps pardonably eager to make its contribution by way of a big case, in view of its poor record in apprehending either German or Russian spies, that ALLAN NUNN MAY and KLAUS FUCHS had both eluded the FBI. SHARP deduces that GREENGLASS was saying that he can honestly tell his lawyer, that he may not have been honestly recounting events for the FBI; that since he was not being scrupulous with the FBI the rest of his testimony given at the trial may legitimately be doubted, including the part treating the cross section sketch of the atom bomb.

In commenting about the lens mold episode, SHARP states GREENGLASS' pretrial statement is entirely silent about the important subepisode in which he allegedly gave JULIUS ROSENBERG the first lens mold sketches in January, 1945.

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He states that in the examination of the GREENGLASSES and ROSENBERGS, it appeared that ROSENBERG could not have stopped on the two mornings in succession at DAVID GREENGLASS' house on his way to work on any normal schedule and arrive at his employment, the Signal Corps, anywhere near on time and that EMANUEL BLOCH had noted this in his summation, stating that the Government might well have produced records of the Signal Corps to show that ROSENBERG was absent or late to work on those days. SHARP makes no provision for ROSENBERG deviating from his normal routine to make the alleged stops by getting to GREENGLASS' house early enough to leave in sufficient time to arrive at the Signal Corps on schedule.

SHARP states that although Judge KAUFMAN said the omission in DAVID GREENGLASS' pretrial statement of mention of the lens mold sketches is consistent with the familiar experience that details are recalled by a witness in a gradual sequence of statements, it is difficult to reconcile the theory of forgotten or overlooked details, with anything so important as the first step in DAVID'S espionage activities.

SHARP also stated that the pretrial statement, with its reference to the events of 1944 where DAVID says that RUTH GREENGLASS asked him if he would furnish information at the request of JULIUS ROSENBERG, is an item that could have easily been suggested by the FBI.

SHARP also noted that DAVID became much more certain in his trial testimony about the nationality of the man that he was introduced to by JULIUS ROSENBERG in an automobile on First Avenue in New York City, than he was in his statement to lawyer, HERBERT J. FABRICANT of O. JOHN ROGGE'S firm; that he told FABRICANT that he did not know if the man was a Russian but at the trial he testified, in effect, that the man was a Russian. He states it is a simple item corresponding to items about "Russians" of which the Canadian spy reports are full and one which could have been suggested by the FBI.

Concerning the Jello box incident SHARP suggests that RUTH GREENGLASS gave memorized testimony and could have received her half of the Jello box from a considerable number of people such as YAKOLEV, fellow workers and unknown members

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of the espionage ring and that the alleged planning with ROSENBERG for a meeting before a Safeway store in Albuquerque is a supposition; that HARRY GOLD arrived unannounced and unexpected and in view of all the testimony about arrangements to obtain information from the GREENGLASSES it would seem inconceivable that HARRY GOLD should attempt the contact without arrangements and take a chance of missing the object of his visit to Albuquerque. He concludes that there are too many "lost" stories and that the GREENGLASSES and GOLD seem to have pieced together separate accounts of two sets of experiences which have no relation to actual facts.

RUTH GREENGLASSES testimony is discredited by SHARP'S supposition of the possibility that she received her half of the Jello box from someone other than JULIUS ROSENBERG which he then claimed, clears up "the omissions, vacillations, inconsistencies and apparent fabrications in the GREENGLASSES total known account of the lens mold episode."

CHAPTER XII

Some Details - New Evidence

SHARP discusses the affidavit of BERNARD GREENGLASS concerning the alleged theft of uranium by DAVID GREENGLASS from Los Alamos and suggests its possible sale by DAVID to account for the money possessed by DAVID in 1950 at the time of making preparation for flight to Mexico.

SHARP also claims memoranda from the GREENGLASSES lawyer's office submitted on the motion for a new trial, clearly showed that a "deal" for the GREENGLASSES was discussed by Government Counsel and the GREENGLASSES lawyers and states that the testimony given by the GREENGLASSES confirms the impression that their testifying for the Government had something to do with the lenient treatment they received.

SHARP states that DAVID's pretrial statement in which he indicates that he permitted the FBI to put words in his mouth, does not establish that FBI Agents knew what they were doing; that the FBI may have gotten the story about that critical day from GOLD and used it as the basis of a

memorandum which DAVID signed and later followed in testifying about the sequence of events or that GOLD and the GREENGLASSES were simply given opportunities to correlate their testimony about that day in Albuquerque. At the very least, SHARP states, the FBI'S techniques encouraged the development of the GREENGLASSES story. SHARP terms the use by Prosecuting Counsel of the GREENGLASSES, ELITCHER, SCHNEIDER and BENTLEY testimony and the creation of the sequence of the console table story as unexcusable and as reckless conduct leading to the taking of its citizens' lives by the United States Government.

CHAPTER XIII

Accomplice Testimony

SHARP discusses the weakness of accomplice testimony particularly in relation to political or partly political offenses and states that recent leading cases reflect that accomplices are being supplemented by professional witnesses. He states that former accomplices are activated by interest in gaining respectability such as LOUIS BUDENZ, who was also interested in reconciling himself with his church, and WHITTAKER CHAMBERS who, telling a steadily changing and growing story, was also interested in protecting his wife, his professional position and his respectability. He indicates by innuendo that Mrs. CHAMBERS was of immoral character. SHARP also brands FBI informants as "those who were originally FBI agents."

The New York State court rule on accomplice testimony requiring corroboration by testimony independently tending "to connect" the prisoner with the crime is endorsed by SHARP who claims its application shows the weakness in the case against the ROSENBERGS and SOBELL.

SHARP states that there is little doubt that the GREENGLASSES, ELITCHER and Miss BENTLEY were accomplices and the only possibility of independent corroboration is the testimony of Dr. BERNHARDT and the photographer SCHNEIDER with respect to the ROSENBERGS, as evidence of "flight"; that the only corroboration against SOBELL is the evidence of a

trip to Mexico as "flight;" that under New York State law neither line of evidence would be sufficient corroboration. He states this application of the New York State law suggests the desirability of amending the federal statutes to require complete review of sentences "based on" accomplice testimony, at least where the sentence is death. SHARP states that an Attorney General as familiar with the New York State law, as Attorney General BROWNELL, might have been expected to consider the entire record including evidence offered on final motions, before recommending that the President of the United States order and expedite the execution of the death sentence against the ROSENBERGS.

CHAPTER XIV

The Final Consideration

SHARP is critical of the speed with which the defense motion for a new trial was disposed of contending that it deserved more careful and deliberate consideration than it received and proceeds to cite various cases and decisions illustrating that cases with no national interest received more time and consideration than did the ROSENBERG case. The mechanics of a motion for a new trial are discussed and SHARP criticizes Judge KAUFMAN for returning in fifteen minutes from his chambers to read his opinion on arguments that took the defense two hours and the prosecution a half hour to deliver. He concludes that KAUFMAN had decided in advance not to be persuaded by anything which might occur in oral argument. The Court of Appeals is also criticized, SHARP stating that it was inconceivable that a motion having as much merit as this, would be disposed of without a full opportunity for briefing and well prepared argument; yet the decision of the District Court was affirmed without a written opinion by the Court of Appeals.

SHARP traces the defense motion for a stay through the Supreme Court proceedings also, citing the court's denial of the application, the subsequent intervention of Attorneys DANIEL MARSHALL and FYKE FARMER, arguing that the provisions

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of the Atomic Energy Act modified the sentence meted out to the ROSENBERGS and the opinion of the Supreme Court which he indicates bore the marks of haste. SHARP maintains that the difficulties that the Supreme Court Justices had with the problem of the Atomic Energy Act provisions indicated that there was great force in the defense argument that deliberate consideration should be given to its solution; that the Court should have given itself time to consider the matter deliberately by granting a stay or to leave Justice DOUGLAS' stay in force pending deliberations.

CHAPTER XV

Execution

SHARP relates the events of the final frantic appeals made by the defense to Attorney General BROWNELL and President EISENHOWER following the rendering of the final judgment by the Supreme Court; of the bitter disappointment of the defense attorney's following the President's denial of the application for executive clemency; of defense attorney, EMANUEL BLOCH'S shock when upon hearing of the President's decision, he had asked that the execution date for the ROSENBERGS set for 11:00 p.m. on Friday, June 19, 1953, be postponed until after the Jewish Sabbath, and it was instead advanced and scheduled to occur before sunset on the same date. He relates BLOCH'S attempts to telephone Attorney General BROWNELL and President EISENHOWER to apprise them of the last two sentences of Justice JACKSON'S opinion which SHARP interpreted as an urging by the Supreme Court, of reconsideration of the sentence, and of receiving an answer from BROWNELL that he would talk to no one who had talked about him as BLOCH had done upon hearing of the expediting of the executions that afternoon; of the word from a White House Secretary that this was a legal matter which did not concern the executive department and the defense never knowing whether the President had seen the Courts opinion before the ROSENBERGS were executed.

CHAPTER XVI

Other Punishments

SHARP offers tribute to the devoted friend and

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lawyer of the ROSENBERGS, EMANUEL BLOCH, who died of a heart attack on January 30, 1954, and calls attention to the additional burdens placed on BLOCH when he was subjected to disciplinary proceedings before a Committee, in practical effect acting for the New York City Bar, for his remarks at the funeral of the ROSENBERGS.

SHARP notes that MORTON SOBELL, convicted with the executed ROSENBERGS, is confined to Alcatraz, a penitentiary for recalcitrant prisoners, although no one has ever suggested that SOBELL is recalcitrant.

The FBI and prosecuting officials are mentioned in connection with the possible salutary effect that criticism of the conduct of these individuals in dealing with SOBELL is beginning to have; that whereas the ROSENBERGS were offered their lives for a "confession" up to the moment of their execution, it appears that SOBELL is being offered better conditions or even freedom, for a price. The three visits made to Alcatraz by an FBI Agent to talk to SOBELL are mentioned and SHARP concludes with the remark, "The methods which succeeded with the GREENGLASSES and failed with the ROSENBERGS are still in use."

CHAPTER XVII

Patterns of Hostility

SHARP states that the ROSENBERGS were subjected to influences from many sources. He enumerates the individuals who participated in the case and cites connections with some factor which would explain his antagonism toward the ROSENBERGS. The GREENGLASSES, GOLD and ELITCHER were simply against the ROSENBERGS; O. JOHN ROGGE was a victim of atonement and reconciliation reaction following his earlier excursion into a period of uncritical viewing of Soviet Russia; O. JOHN ROGGE and the American Civil Liberties Union, representing a great spectrum of liberals, were against the ROSENBERGS.

SHARP stated that the principal heroes and villains of the case were all members of the Jewish Community; the

NY 65-15348

ROSENBERGS, Mr. COHN, SAYPOL, Judge KAUFMAN, EMANUEL BLOCH, ALEXANDER BLOCH, MORTON SOBELL, EDWARD KUNTZ and HAROLD PHILIPS, his trial lawyers, and while anti-semitism would seem to be cancelled out thereby, fear of the influence of anti-semitism by the Jewish Community combined with an old Jewish tradition, that of keeping itself free from legitimate reproach and to purge itself vigorously of those who bring any unwarranted criticisms upon themselves and so, however, illegally or unjustly, upon the group, led Jewish Judge and prosecutors to be particularly hard on the ROSENBERGS.

SHARP says COHN and SAYPOL rose in the Democratic organization in New York City and Judge KAUFMAN cannot have been free in his earlier days from the effects of its power; that the late EDWARD FLYNN, boss of the Bronx and campaign manager for President ROOSEVELT'S third term, was a personal influence, affecting their local careers; that FLYNN was susceptible to influence of lay and ecclesiastical associates who think that any means are justified in weakening communism. SHARP noted that the ROSENBERGS case was begun under Attorney General J. HOWARD MC GRATH at a time when the Republicans were using the HISS case as a means of preparing for their 1952 victory and that by June, 1953, JAMES KILSHEIMER was the only member of the original team of three principal prosecutors, still in the office of the new Republican United States Attorney, Southern District of New York; that COHN had joined Senator MC CARTHY and SAYPOL had become a Justice of the New York Supreme Court. The FBI was still the same and lawyers from the MC GRATH and MC GRANERY administration were still in charge of reviewing the ROSENBERG case in the Justice Department and representing the United States in opposing motions in the Supreme Court.

SHARP concludes that Communist spies, liberals and New York organization Democrats, doomed the ROSENBERGS; a new Republican Administration refused them clemency and the principal responsibilities must be afforded the Courts. SHARP suggests critical study would be in order of Judge KAUFMAN, Judges SWAN, FRANK and AUGUSTUS HAND; the ROOSEVELT Justices in the Supreme Court; the one Republican Justice BURTON and the other TRUMAN Justice to ascertain their biography and character, to determine where they belong in SHARP'S "Microcosm".

Routing Slip
FD-4 (8-18-54)

To BUREAU

(ROOM 1734)

Date 7/21/56

FILE # BUFILE 65-58236

☐ Director

Att.

Title JULIUS ROSENBERG

☐ SAC

☐ ASAC

☐ Supv.

☐ Agent

☐ SE

☐ CC

☐ Steno

☐ Clerk

was, et al

Espionage - R

ACTION DESIRED

☐ Reassign to

☐ Initial & return

☐ Open Case

☐ Send Serials

☐ Search & return

☐ Expedite

☐ Submit report by

☐ Recharge serials

☐ Correct

☐ Prepare tickler

☐ Call me

☐ Return serials

☐ See me

☐ Submit new charge-out

☐ Acknowledge

☐ Type

☐ Leads need attention

☐ Bring file

☐ File

☐ Delinquent

☐ Return with explanation or notation as to action taken.

BOOK ENTITLED "WAS JUSTICE DONE?"

BY MALCOLM P. SHARP REQUESTED

BY BUREAU ATTACHED HERETO.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

DATE 7-28-86 BY 3042 PWT-JMC

ENCLOSURE

SAC JAMES J. KELLY

Office NEW YORK

Office Memorandum • UNITED STATES GOVERNMENT

TO : A. H. Belmont *AHB*

DATE: August 7, 1956

FROM : W. A. Branigan *WAB*

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 10/24/82 BY 3043 PWT/Im

SUBJECT: JULIUS ROSENBERG, was., et al
ESPIONAGE - R

Tolson	_____
Nichols	_____
Boardman	_____
Belmont	_____
Mason	_____
Mohr	_____
Parsons	_____
Rosen	_____
Tamm	_____
Nease	_____
Winterrowd	_____
Tele. Room	_____
Holloman	_____
Gandy	_____

New York Office forwarded a book entitled "Was Justice Done? The Rosenberg-Sobell Case" written by Malcolm P. Sharp, professor of law, University of Chicago. Sharp appeared as one of the Rosenberg counsel just prior to the execution of the Rosenbergs.

_____ and is an active member and past president of the Chicago Chapter of the National Lawyers Guild. *b7D*

This book purports to present a supposed legal review of the Rosenberg case. Sharp does not make broad allegations or vitriolic statements but attempts to make suggestions concerning what he considers might be the "true facts" of the case. His main theme is that he agrees David and Ruth Greenglass were engaged in espionage activities but that the Rosenbergs were not so engaged. He suggests the Greenglasses brought in the Rosenbergs in order to make the case sensational and to have someone to prosecute inasmuch as Anatoli Yakolev, Soviet Vice Consul, New York City, had left the United States and could not be prosecuted. He makes the statement that it was not necessary for the FBI or other prosecuting officials to conspire to produce the testimony of David Greenglass but all that was necessary was to show zeal and interest in further testimony and Greenglass would do the rest.

Sharp analyzes all points which were raised by the defense in post trial motions and concludes that the Rosenbergs should have been granted a new trial since these points cast doubts upon the testimony of David and Ruth Greenglass. It is to be noted that all these points were considered by appellate courts and were rejected.

Sharp produces one novel theory. In attempting to account for the \$4,000 which David Greenglass received from Julius Rosenberg and which Greenglass furnished to his attorney as a fee, Sharp suggests first this was a direct transfer from the Russians to David Greenglass and later introduces his theory that Greenglass obtained this money by selling uranium which he stole from Los Alamos. It is to be noted Greenglass admitted taking a small quantity of uranium as a souvenir and throwing it into the East River. However, this souvenir would not be valued at any figure close to \$4,000.

65-58236

JPL:jdb

(5)

cc - Belmont

Branigan

Nichols

Lee

SENT DIRECTOR

8-8-56

AUG 21 1956

AUG 16 1956

*Book attached and
filed in Bureau
8-16-56
(25)*

Memorandum for Mr. Belmont

This book is a rehash of all the motions and appeals made in the instant case which Sharp claims warranted a new trial. These motions were heard by highly qualified judges in the Circuit Court of Appeals and the United States Supreme Court on numerous occasions and all these appeals were decided against the Rosenbergs.

ACTION:

It is recommended this book be filed in the Bureau Library.

Att
G
JH
V

WHL

WHL

OK

COAST TO COAST

BY GARDNER

The unspectacular manner in which the F. B. I. solved both the Riesel and Weinberger pig-saw mysteries has frightened racket guys, would-be kidnapers and other criminals more than if the perpetrators shot it out with the G-Men in Dillinger fashion. The hoodlums can cope with brawn but not brains; as far as they're concerned the latter is a secret weapon.

Myles Lane, the former United States Attorney, talking about John Edgar Hoover's superb organization, revealed this heretofore unreported sidelight that helped send the atom-bomb spies, the Rosenbergs, to the hot seat.



During their trial the government alleged that the Rosenbergs, if they hadn't been arrested when they were, planned to leave the country. However, the prosecution had no proof until Lane was tipped off that the couple, together with their two children, had posed for passport pictures. Myles passed this information on to the F. B. I., who asked that the prosecution stall while its sleuths made a needle-in-the-haystack search to find the passport photographer.

Within a few hours a new witness was produced, a man who swore he had made passport photos of the Rosenbergs. When challenged by the defense lawyers, who sarcastically needed him about having an elephantine memory, the photographer made his point clear. "Ordinarily," he admitted, "I might not remember them. But since they came in on a Saturday, when I'm usually closed, and the two children got me nervous running around and messing up the studio—they made an indelible impression on my mind."

Mr. Lane added a further punch to the incident: Though the G-Men visited hundreds of photographers' studios within the short span of five hours, they could have solved the puzzle within five minutes if one of the investigators was psychic. For the studio of the passport photography who shot the Rosenbergs, then helped to fix them, was located right behind the Foley Square Courthouse, the from which "travel agency" the traitors were given a one-way

trip which required no passport.

I'm happy to learn that Esie Pinza, a grand gentleman, will not be permanently wheelchair-bound by the stroke he suffered at the seaside resort he used to visit by bike between singing lessons in his home town of Ravenna, Italy. Esie during a split-screen tepee interview with us recently, told this story of his father's persistent efforts to engage a singing teacher for him despite their lack of funds for a fee. "It was a peculiar thing," the singer recalled, "but I had three different coaches in five years—and all three of them went out of their minds and committed suicide. I never took another lesson," he added, "because I was afraid Italy would run out of teachers!"

One of the N. Y. luxuries you can't enjoy in Miami Beach is a glass of freshly squeezed Florida orange juice. Most of the restaurants, including some of the finest, have their "fresh juice" delivered in bulk containers every morning at 80¢ per gallon.

Earl Smalley Jr., who parlayed his Couture auto rental service from a couple of cars into a coast-to-coast caravan inspired the Greyhound Bus people to dip their finances into a similar nationwide operation. Jack E. Leonard, who, when he weighed more than 300 was two of our favorite people, says his wife is also on a diet. "She eats three humming birds every day," he explains. "It doesn't take off weight but it makes her very talkative."

Mr. and Mrs. Joe Louis, who battled 1,000 by correctly answering the first five questions put to them by Dennis James on "High Finance," hope to win \$40,000 on the quiz-show. Joe plans to turn over all of his share of the winnings to Uncle Sam in an effort to reduce his tax indebtedness. However, he won't make much of a dent in the \$1,300,000 figure for this season—the boys will take a fresh tax bite off the top of the prize before applying the balance to the state and federal governments.



The F. B. I., headed by J. Edgar Hoover, above, proved the Rosenbergs planned to leave the country. See Hy Gardner's column.

Tolson
Belmont
Mohr
Parsons
Rosen
Tamm
Nease
Winterrowd
Tele. Room
Holloman
Gandy

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DATE 7-20-86 BY 3043 PWT/mc

Life
Gardner
8/24/56
H. H.

Page 1
New York
10/3/56

Julius Rosenberg
is this son

65-58236-1

NOT RECORDED
167 SEP 28 1956

11 SEP 27 1956

Wash. Post
Times Herald
N. Y. Mirror
N. Y. Daily News
Daily Worker
The Worker
New Leader

AUG 28 1956

SENT DIRECTOR

57 OCT 3 1956

ORIGINAL FILED IN 65-58236-1685

Office Memorandum • UNITED STATES GOVERNMENT

TO :

DIRECTOR, FBI (65-58236)

DATE: 8/31/56

FROM :

SAC, NEW YORK (65-15348)

SUBJECT:

JULIUS ROSENBERG, was, ET AL
ESPIONAGE - R

On 8/21/56, RUTH GREENGLASS, sister-in-law of JULIUS ROSENBERG, executed Soviet spy, furnished a letter which was received by her brother-in-law, BERNARD GREENGLASS, from a foreign source. The envelope containing the letter was addressed as follows:

U. S. A.
New York
CHERIE STRIET 64
BERNARD
GRINGLAS

A return address was reflected as:

N. R. BULGARIA-g, STALIN-
UL, VAZRAJDANE No. 6
BOJIDAR FOTEV

The envelope bore Bulgarian postage stamps, but the post date was illegible.

The letter enclosed was dated 8/10/56, and according to the translation of Mrs. MARIE BOGUSLAV, translator in the NYO, the statement substantially, as follows, was written in 5 languages:

"MISTER GREENGLASS, PLEASE SEND A PISTOE"

Mrs. BOGUSLAV advised that the languages were: English, French, German, Russian and Bulgarian, but each was poorly written grammatically.

Bureau (65-58236) (RM)
NY 65-15348

RTH:cam
(3)

RECORDED-45

INDEXED - 45

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DATE 7-28-86 BY 3042 PWT-JAR

7 SEP 5 1956

1-D F141
10 SEP 12 1956

EX-108

ESP/SEC

LETTER TO DIRECTOR, FBI

8/31/56

Re: JULIUS ROSENBERG, was, ET AL
ESPIONAGE - R

The sender's name and address was translated as:

PEOPLES BULGARIAN REPUBLIC

TOWN: STALIN *Russia*

STREET: "VAZRAJDANE" #6

NAME: BOJIDAR FOTEV *Russia*

RUTH GREENGLASS advised that during the trial of ETHEL and JULIUS ROSENBERG, the residences of the members of the GREENGLASS family were published in the newspapers and that she believes the address of 64 Sheriff St. probably was obtained by the sender therefrom.

4-22 (Rev. 3-22-56)

Federal Bureau of Investigation
Records Section

9-11, 1956

☐	Name Check Unit - Room 6523
☐	Service Unit - Room 6524
☐	Forward to File Review
☒	Attention <u>Connor</u>
☒	Return to <u>See</u> <u>1734</u>
	Supervisor Room Ext.

Type of References Requested:

☐	Regular Request (Analytical Search)
☒	All References (Subversive & Nonsubversive)
☐	Subversive References Only
☐	Nonsubversive References Only
☐	Main References Only

Type of Search Requested:

☐	Restricted to Locality of _____
☐	Exact Name Only (On the Nose)
☒	Buildup + <u>BA</u> ☐ Variations
☐	Check for Alphabetical Loyalty Form

Subject BOJICAR FOTEV
Birthdate & Place _____
Address _____

Localities

R# _____ Date 9-11 Searcher Initials RM
FILE NUMBER SERIAL

NR
One Fotev
PI 100-346268-992-p.11

reg'd
4-30

7-28-86

3042 PWT-1A

[Redacted]

[Redacted]

Julius Rosenberg

INDEXED-93

65-58236-22

NOT RECORDED

EX-108

SEP 6 1950

[Signature]

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DATE 7-28-86 BY 3042 bwr

SEP 13 1950

65-58236-2983

ENCLOSURE

TRIAL BY TREASON

THE NATIONAL COMMITTEE TO SECURE JUSTICE FOR THE ROSENBERGS AND MORTON SOBELL



August 25, 1956

Prepared and released by the
COMMITTEE ON UN-AMERICAN ACTIVITIES, U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

65-58236-2283

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

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MORGAN M. MOULDER, Missouri

CLYDE DOYLE, California

JAMES B. FRAZIER, Jr., Tennessee

EDWIN E. WILLIS, Louisiana

HAROLD H. VELDE, Illinois

BERNARD W. KEARNEY, New York

DONALD L. JACKSON, California

GORDON H. SCHERER, Ohio

RICHARD ARENS, *Director*

II

PUBLIC LAW 601, 79TH CONGRESS

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946], chapter 753, 2d session, which provides:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * **

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

SEC. 121. STANDING COMMITTEES

17. Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEE

(g) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

RULES ADOPTED BY THE 84TH CONGRESS

House Resolution 5, January 5, 1955

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

(q) Committee on Un-American Activities, to consist of nine members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time, investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

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(Photo courtesy of the Associated Press)

Atom spies Ethel and Julius Rosenberg, key figures in the mammoth international Communist propaganda campaign, are brought to court to stand trial.

VI

TRIAL BY TREASON

THE NATIONAL COMMITTEE TO SECURE JUSTICE FOR THE ROSENBERGS AND MORTON SOBELL

INTRODUCTION

THE KREMLIN AND THE ROSENBERGS

On June 19, 1953, Ethel and Julius Rosenberg were executed in the electric chair at Sing Sing prison. Technically, the crime for which they paid with their lives was participation in a conspiracy to commit espionage. Actually, the crime was the betrayal of America through the transmission of some of America's most precious military secrets to Soviet Russia. This was the Rosenberg case of record, one in which two spies were arrested, tried, and punished, in accordance with legal process and after exhaustive assertion of their legal rights.

From this emerged another Rosenberg case: a mammoth propaganda campaign designed to obliterate the crime and exploit the Rosenbergs and their codefendant, Morton Sobell, for the purposes of international communism. It is this campaign, conducted in the United States by the National Committee To Secure Justice, which has been the subject of the investigation and hearings of the Committee on Un-American Activities.

The Committee on Un-American Activities has prepared this report not only because the facts of the Rosenberg campaign deserve study, but also because these facts, taken together, provide a singularly instructive example of a Communist front: of how it is created, directed, and financed. In particular, they provide an example of the means by which the Communists today attempt to prepare the way for the fruition of their conspiracy. Essential for their success is the disintegration of the Nation's social fabric; it was to promote this disintegration that the Rosenberg campaign was conceived.

Nowhere has the craven hypocrisy of communism been exposed so tellingly as in the monstrous campaign organized in behalf of atomic espionage agents Julius and Ethel Rosenberg, whose treason brought them death in Sing Sing's electric chair and Communist martyrdom.

Fraud was the hallmark of this Communist undertaking—fraud with sinister purpose and spectacular profit: it sought to blacken the name of America throughout the world, and milked the American people of some half million dollars while it did so.

Millions of helpless and innocent persons have perished behind the Iron Curtain through wholesale butchery, planned starvation, and the deliberate extermination of minorities. Together they exemplify the real methods of Soviet justice—a bullet in the neck without benefit of trial. No protests have been raised by the Communists and their confederates against the fate of this doomed legion. But for the Rosenbergs—duly convicted of a shameless betrayal of their

country and secrets vital to its survival—they brazenly demanded "justice."

Actually, the efforts of the Communists were never designed to benefit the spies. The Rosenbergs, as individuals, were of no concern to them. The purposes of the Communist campaign went far beyond the Rosenbergs though it squeezed from them the last possible particle of value. A study of the activities and the records of the Rosenberg campaign point clearly to the fact that it was created for these objectives:

- (1) To vilify the United States and its institutions and spread the lie that its Government is bent on annihilating minority groups and suppressing genuine political dissent;
- (2) To provide additional funds for the overall Communist program of subversion and propaganda;
- (3) To recruit new members and sympathizers for the Communist apparatus, crumbling under the impact of the Korean war, official pressure, and the exposure of Communist infiltration in government, education, and labor;
- (4) To refurbish the badly tarnished reputation of the Communist Party;
- (5) To create and exploit divisive anti-Semitic propaganda;
- (6) To bolster the Communist campaign to capture American churches;
- (7) To divert attention from anti-Semitic pogroms in Russia and Soviet satellite nations;
- (8) To discredit American courts and judicial procedures, and cast doubt on all investigations and convictions of Communists.

The campaign was craftily fashioned to offer a diverse choice of appeals to those who were not Communists or deliberate participants in Communist activity. It entrapped many genuinely motivated by ideals of charity and mercy and Christian compassion. It stimulated the almost reflexive reaction of those who saw a recrudescence of Nazism in any action against any Jew, and frightened gullible members of religious and racial minorities into believing that the sentence of the Rosenbergs was a prelude to their own doom. Gathered in, too, were the misfits who like to believe that they are handicapped by our political and economic system, and those prone to blame their failures on religious and minority prejudice instead of their own inadequacies.

The campaign attracted, in particular, many sincerely opposed to capital punishment, and it was these who can rightly feel most victimized by the dishonesty of the Rosenberg solicitations.

The Rosenberg committee raised no objection to capital punishment in principle—particularly behind the Iron Curtain. Two representatives of the committee called on an official of a society dedicated to the abolition of capital punishment to urge that organization to join in opposing the death penalty for the Rosenbergs. The callers were asked whether they were against all capital punishment. It soon became evident that they were against capital punishment only when it applied to the Rosenbergs. The execution of a thousand persons whom they considered "Fascists" would not have caused them the slightest qualm.

The propaganda motifs of the campaign, the various assignments given participants, the tenor of the meetings were all calculated to condition newly attracted dupes to the "atmosphere and ethic of conspiracy," and to begin the transfer of their loyalty from America to the Soviet Union. One phase of this was disclosed by the officers of the National Committee, Joseph Brainin and David and Emily Alman, in a memorial brochure published after the Rosenbergs' execution:

*** For many of these people it was their first venture into public life in their communities.

A very large number of "Rosenberg persons" were housewives and working women to whom the Case became a part of their everyday lives. They would no more omit a daily visit to a clergyman or some other work on the Case than they would omit feeding their children or punching a time clock.

Dr. S. Andhil Fineberg, community relations consultant of the American Jewish Committee, who has proved of great assistance in the investigation of the Rosenberg campaign by the Committee on Un-American Activities summarized some of the other achievements of the Communists as follows:

1. They have made certain that Julius and Ethel Rosenberg, who were pre-disposed to remain silent anyhow, will never reveal what they know about the Communist spy system. The "martyrdom" of these traitors is now assured and they will be played up in future Communist propaganda.

2. By focusing attention on a phony case of alleged judicial and political murder in the United States, the Reds have drawn public attention away from the barbaric injustices of the Kremlin at the very time that an open campaign of Communist anti-Semitism was being launched.

3. In their speeches and pamphlets about the Rosenbergs the Commies have injected a tremendous amount of anti-American propaganda, picturing the average American as the exploited victim of a ruling clique that intends to make huge profits out of war. The Rosenbergs were "peace heroes." Large sums collected from non-Communists and even anti-Communists were made available for Communist propaganda.

4. The pro-Rosenberg agitators have instilled fear, suspicion and confusion in the hearts of many susceptible individuals here and abroad. Some of those who were drawn into the campaign for the Rosenbergs are now potential Communists. Party workers will now be able to recruit them.

5. The Communist schemers that managed the Committee to Secure Justice for the Rosenbergs have built one of the largest and most successful Communist front organizations ever created in the United States. Those who contributed funds, services, or even signatures for the pro-Rosenberg campaign are now candidates for other jobs requiring the help of non-Communists. Having established contact with these easy marks, the Reds will be able to make further use of them.

6. Persons of relative unimportance have tasted publicity and aggrandizement which puffed their pride. Whatever following they have thus gained within their own circles will be exploited by front organizations which will dangle the lure of further publicity.

7. The hard-core Communists now know by excellent practice how to conduct a propaganda campaign by fraudulently playing upon the compassion and kindness of the unwary. With this self-assurance the faithful followers of the Kremlin will be ready and eager to serve their masters again by staging similar hubbubs in other cases where they can pretend to be the defenders of freedom of speech, of justice for the wronged, or the like.

The case of the Rosenbergs and Morton Sobell who is now serving a 30-year prison sentence, is too well known to require detailed recapitulation here. Briefly, the facts that emerged from their trial were these: Both the Rosenbergs and Sobell were active and devoted Communists. Through David Greenglass, a brother of Ethel Rosen-

berg, the Rosenbergs obtained some of the basic secrets of the atomic bomb and turned these over to the Soviet Union. David Greenglass, who confessed his role in the conspiracy, had been assigned to a machine shop in the secret Los Alamos, N. Mex., laboratory in 1944. Greenglass had no inkling of the nature of the super-secret project on which he was working until told by Julius—who had learned it from Soviet sources—that it involved construction of the atomic bomb. Greenglass' wife, Ruth, testified the Rosenbergs had sent her to New Mexico to recruit him for espionage.

Greenglass came to New York on furlough in January 1945 and gave Rosenberg a report and sketches of the explosive lens used to detonate the atom bomb. After dinner at the Rosenberg's apartment, Julius gave the Greenglasses a jaggedly cut section of a Jello box and told them that the matching half would be presented by a courier who was to contact Greenglass in New Mexico. The courier turned out to be Harry Gold, who was later arrested as the courier for the British atomic scientist, Klaus Fuchs. Gold testified his superior, Soviet vice-consul Anatoli Yakoulev, have given him the matching piece of the Jello box and had instructed him to identify himself to Greenglass by saying, "I come from Julius." Gold saw the Greenglasses in New Mexico and obtained a report which his Russian superiors praised as being of outstanding value.

Altogether, Greenglass supplied three reports on atomic projects. On another visit to New York, he turned over directly to Rosenberg details of the top secret trigger device for the bomb later dropped on Nagasaki. David's handwritten report was typed up by Ethel Rosenberg for delivery to the Russians.

Another witness in the trial, Max Elitcher, testified that Julius Rosenberg and Morton Sobell had sought to recruit him into the espionage ring. Elitcher told of a frantic midnight drive with Sobell in New York to turn over a microfilm to Rosenberg. Elitcher also testified that Rosenberg had boasted to him of how he began his career as a Soviet spy. Elizabeth Bentley, secretary to the late Jacob Golos, one of the Kremlin's highest secret agents in the United States, testified that she had received phone calls from a man identifying himself as "Julius."

When Harry Gold was arrested, Sobell fled to Mexico with his family. He was later deported by the Mexican police and driven across the border, where he was arrested by Federal agents. Rosenberg gave Greenglass \$5,000 and instructions on how to reach Russia, but Greenglass refused to comply. He was arrested soon afterward. On the advice of his lawyer, he decided to cooperate with the Government and reveal the details of the conspiracy. Julius Rosenberg was arrested as he and his wife were preparing to flee. They had had passport photos made for this purpose, and identification of them by the photographer—who made himself known only in the last days of the trial—proved one of the most damaging points against them. Ethel Rosenberg was arrested a month later as she left a session of the Grand Jury investigating the case. She had refused to answer all questions for the reason of possible self-incrimination.

The separate threads of testimony wove themselves into a solid fabric of guilt. Against all the facts elicited from the prosecution

witnesses, the Rosenbergs presented only bare, unsupported denials. They could not refute a single point. The prosecution had planned to call over 120 witnesses but found that 22 were sufficient to establish the truth of the charges. The Rosenbergs did not summon a single witness for themselves. The Rosenbergs testified in their own behalf, but Sobell did not even take the stand. The jury, listening to all the testimony and weighing all the evidence in the more than 3 weeks of examination and cross-examination, of challenge and counterchallenge, brought in its unanimous verdict of guilty.

The Communist newspapers did not publish a word about the trial at the time it was taking place. A stranger from another world, reading only the Communist press during this period, would never have known of the Rosenbergs or the trial. Nowhere could he have found any part of the impassioned outcries of "frameup" that were to characterize the Communist campaign later.

The charges raised by the Communists after the trial were cunning, deliberate fabrications without the slightest basis of fact. There were many proofs of this. For example, the *Daily Worker* on July 13, 1953, reporting a 12-day protest fast by Professor Ralph T. Templin of Central State College, Ohio, referred to the "execution of atom spies Julius and Ethel Rosenberg." In the article the phrase was not set off by the quotation marks customarily used by the Communists to cast doubt on the designation.

Another example was provided by Dr. Fineberg. After hearing Mrs. Sobell speak at a meeting at Far Rockaway, New York, he declared, "I have an excellent reason never to doubt the guilt of the Rosenbergs." He quoted her as assuring the audience that "Julius and Ethel could save their own skins by talking but Julius and Ethel will never betray their friends."

The Rosenbergs and Sobell received every possible protection of their rights. It took them more than two years to exhaust their legal resources. They had a trial by a jury of their peers; the sentence was appraised seven times by the United States Court of Appeals, and upheld each time. Another seven times it came before the United States Supreme Court, which refused to review it. There were three requests for clemency to two Presidents of the United States and these, too, were denied.

During the trial itself, there was not a single charge of anti-Semitism, of prejudice, of perjury, of duress or intimidation, made by the counsel for the defense. Emanuel Bloch, Julius Rosenberg's attorney and chief of the battery of defense lawyers, was skilled in Communist Party legal strategy. He had represented such leading Communists as Marcel Scherer, Steve Nelson, and Marion Bachrach. Yet not once did Bloch or his colleagues challenge the conduct of the trial.¹ On the contrary, all of the defense lawyers—Emanuel Bloch in particular—were almost effusive in their praise of the trial procedure.

¹ The attorneys appearing at the trial were:
For the Government: United States Attorney Irving H. Saypol, and Miles J. Lane, Roy M. Cohn, John M. Foley, James B. Kilheimer III and James E. Brannigan, Assistant United States attorneys.
For Julius Rosenberg: Emanuel H. Bloch.
For Ethel Rosenberg: Alexander Bloch (father of Emanuel H. Bloch).
For David Greenglass: O. John Rogge.
For Morton Sobell: Harold M. Phillips and Edward Kuntz (these were later replaced by Howard N. Meyer).

SAVE THE ROSENBERGS

● ETHEL AND JULIUS ROSENBERG MUST NOT DIE!

SAVE THE
ROSENBERGS
AMNESTY FOR ALL
SMITH ACT PRISONERS
FREE EUGENE DENNIS

● FREE MRS. ROSA LEE INGRAM

FREE IRVING POTASH

FREE BEN DAVIS

FREE THE TRENTON TWO

Propaganda leaflet of New York Civil Rights Congress illustrates rank of the Rosenbergs in the Communist propaganda hierarchy

Later Bloch was to charge that the Rosenbergs had been convicted in a "trial by newspapers" and that anti-Semitism, prejudicial conduct on the part of Judge Irving Kaufman, and an overwhelming atmosphere of hostility had made fair process impossible. But it was this same Bloch who declared in his summation to the jury:

I would like to say to the Court on behalf of all defense counsel that we feel you have treated us with utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and despite any disagreements we have had with the Court on questions of law, we feel that the trial has been conducted, and we hope that we have contributed our share, with the dignity and decorum that befits an American trial.

Again, it was Bloch who protested during the trial, "I am not attributing anything wrong to the FBI or to the prosecutor's staff and let's get this straight right now." And it was Bloch who declared after the verdict was announced:

I want to extend my appreciation to the Court for its courtesies, and again I repeat I want to extend my appreciation for the courtesies extended to me and my staff by Mr. Saypol and the members of his staff as well as the members of the FBI and I would like to say to the jury that a lawyer does not always win a case; all the lawyer expects is a jury to decide a case on the evidence with mature deliberation. I feel satisfied by reason of the length of time that you took with your deliberations that you examined very carefully the evidence and came to a certain conclusion.

Although Bloch later contended the Rosenbergs were convicted only because they were Communists, he declared at the time of sentencing, " * * * I wanted to keep politics out of this case and I think that with the Court's aid we have been able to keep it out up to now." Later, Bloch was to claim that the jury was packed with persons bent on sending the Rosenbergs to their death. But when the jury was impaneled, Bloch did not even use up the last of the challenges which were available to him to eliminate persons he felt were prejudiced against the defendants.

During the trial, Bloch did not cross-examine Harry Gold, whose testimony corroborated that of the Greenglasses; and in his summation, Bloch declared of Gold, "There is no doubt in my mind that he impressed upon you as well as impressed everybody that he was telling the truth, the absolute truth." In this summation, he also conceded the guilt of Greenglass, declaring that "it is indisputed" that Greenglass stole the secrets of the "most terrible and destructive weapon yet invented by man."

After the Rosenberg campaign got underway, the Communists described Gold as "a pathological liar" and Greenglass as "an unlettered mechanic for whom an understanding and transmittal of nuclear secrets would have been impossible."

After he had been sentenced, Sobell was to charge that he had been forcibly kidnaped from Mexico; that Mexican police had beaten him and kidnaped him and finally deposited him in the hands of FBI agents waiting across the border. Yet not a word of this was mentioned at the trial. The reasons for this were obvious to Judge Jerome Frank, who delivered the opinion rejecting the first Rosenberg-Sobell appeal: "When the Government introduced evidence to show that the Sobells had been legally deported from Mexico (evidence clearly contradictory to Sobell's present assertion) he made no move to bring to light the facts of his alleged abduction. He preferred to take his

chances on the verdict, withholding his trump card until the trial was over."

It is not within the purview of this report to examine Judge Kaufman's conduct of the trial. None of the higher courts which have reviewed the Rosenberg-Sobell case have found the slightest reason to reprove him. Throughout the trial, Judge Kaufman was meticulous in his efforts to safeguard the rights of the defendants. Again and again he cautioned the jury that it was not to consider any issues of communism but was to limit itself solely to evaluating the facts of the specific crime with which the Rosenbergs and Sobell were charged. At one point, in an exchange with the prosecutor, Bloch inadvertently conceded the fact of Julius Rosenberg's membership in the Communist Party, a point on which the defendants themselves had refused to testify. Judge Kaufman immediately apprised Bloch of the danger to his clients and afforded him the opportunity to withdraw the concession. It is significant to note too that, in his charge to the jury, Judge Kaufman included all but 2 of some 42 requests by the defense for specific instructions on evaluating the evidence.

After the sentencing, the Communists and the Rosenberg adherents subjected the judge to almost unbearable harassment in an effort to force him to moderate the sentences. He and his family received a barrage of threatening letters and angry phone calls. Raucous visitors crowded his chambers. Twice police were forced to search his office and home because of a tip that a bomb had been planted there. It was also necessary for police to guard the judge and his family. These tactics were an example of the very lynch justice which the Communists so sanctimoniously denounce. "When the time comes that we yield to such pressure," Judge Kaufman declared, "we can close the doors of our courts."

Conveniently disregarding the trial record, the Communists concentrated on encouraging the belief that the Rosenbergs had been convicted only because of the fact that they were Communists and that the trial concerned itself not with the question of guilt or innocence on the charges of espionage, but only with that of "political dissent." It was a repetition of the old and shopworn cry of the Communists that no matter what a Communist does, it is wrong to convict him or even censure him because to do so is to yield to political passion. On this point, Dr. Fineberg later declared:

Insisting that whenever Communists are tried and found guilty of acts against the United States judicial lynching occurs is in the best tradition of Communist propaganda. It cloaks Communists, even those who refuse to say whether they are Communists, in garbs of untouchable rectitude. It dresses the FBI in devil's apparel and interprets every effort of the American Government to prevent treacherous acts as a crime of passion against unprotected innocence.

On December 31, 1952, the Circuit Court of Appeals rejected the Rosenberg petition for release, in which the spies contended they had been denied a fair trial. The Court examined all the questions bearing on whether the atmosphere of the trial had been such as to deprive the defendants of their rights. It should be noted that, because of a technicality of legal procedure, the Court based its ruling entirely on the facts stated by the defendants and on the various exhibits presented by them.

After considering an assortment of newspaper articles submitted by the defendants to substantiate their charge of "trial by news-

paper," the Court noted that there had been "considerable newspaper comment" at the time of arrest but the newspaper references were "few and brief" during September, October, and November, 1950, and that from November to February 1, 1951, in the period immediately before the trial, there were no news items whatsoever relating to the forthcoming trial.

The Court pointed out that the defendants did not avail themselves of any for the remedies open to them for raising this issue before the trial began and the defense counsel did not even request that the place of trial be changed, the normal step when attorneys feel that public animosity would make a fair trial impossible. "At the time of the trial the defendants obviously felt," the Court declared, "that the publicity did their clients no harm and now want this Court to decide otherwise." The Court also pointed out that Bloch refuted his own contention when he declared that he had not realized the extent and inflammatory character of the publicity because it could not have been revealed "by the usual sporadic reading of an average newspaper reader."

The Appeals Court weighed carefully two other contentions of the defense which were later to comprise the core of the Rosenberg propaganda campaign. One of these concerned Greenglass' ability to acquire atomic information and prepare the sketches which he said he had given to the Rosenbergs. The defense offered opinions of various "experts" to the effect that a man of Greenglass' education and background would not have been able to gather and pass on such information but the opinions of the "experts," the Court declared, were "completely irrelevant" because none of them knew Greenglass personally and none were in a position to judge his memory, which "no matter what his education, may have been amply sufficient for this purpose."

The other was the alleged perjury of Ben Schneider, the photographer to whom the Rosenbergs had come for passport pictures prior to their intended flight. This turned upon a very minor point. In his testimony at the trial, Schneider declared that he had not seen the Rosenbergs between the time he had made the pictures and the time he identified them in court. Actually he had been taken into the courtroom the day before he testified so that he could be sure it was the Rosenbergs whom he remembered. The Court ruled that examination of his testimony after cross-examination showed that all parties regarded his statement that he had not seen the Rosenbergs before "today" as meaning before the trial, and that there was not the "slightest indication that Schneider's testimony was intentionally false."

Nevertheless, for the Communists and the Rosenberg partisans, it was as if these legal decisions never existed. Throughout the entire Rosenberg campaign, the charges about Greenglass, about Schneider, and about the alleged prejudice of the trial were shrieked over and over by Rosenberg speakers and by millions of handbills and pamphlets representing them as "new evidence" long after this "new evidence" had been thrown out by the courts. It was a form of brainwashing on a mammoth scale—the totalitarian Big Lie in its most evil form. The effect was to create a terrifying chimera, the mere mention of which was sufficient, eventually, to convince or confuse a great many people who did not know or did not care to know the truth.

The Communists later attempted to create the belief that there was in fact no such thing as an atomic secret and that consequently the Rosenbergs could not be guilty of having betrayed secrets which never existed. Actually, the information provided by the Rosenbergs was of tremendous value to the Soviets in the most critical period of international relations.

True, there was no "one secret" of the atomic bomb. There were, however, a number of secrets relating to research, theory, and particularly to methods of production, the acquisition of which could have saved—and unquestionably did save—the Soviet Union valuable time and labor in its quest for equality and ultimate supremacy on the battlefield of the atom. The Joint Committee on Atomic Energy of the 82d Congress, in its report on Soviet atomic espionage declared:

"The extent of the espionage damage known to have been inflicted upon the atomic energy position of the United States is indisputably severe. * * * Whereas our own wartime Los Alamos laboratory grappled with a series of abstruse and exquisite weapons problems, finally arriving at practical solutions after great expenditures of effort, money, and technical talent, the fruits of this struggle were largely available to the Soviets at an early stage of their rival enterprise. * * * The Soviets, from an early point in their effort, could avoid making many of the mistakes and following many of the costly false leads that inevitably attended the pioneering days of the American program.

Nor contrary to what the traitors maintained, did the Soviet Union need atomic secrets to help it in its war against Germany or Japan. E. H. Cookridge exposed this fiction well in his book on Soviet espionage, "The Net That Covers the World."

Given every piece of information as it became available to Allied research workers, the Soviet Union could not have built atomic weapons before the war ended. The object of the intense military espionage organized by the U. S. S. R. on her allies was to strengthen her position in the years immediately after the defeat of Germany and Japan, both by constructing atomic weapons and by being able to gauge the defensive strength of those who opposed her. The allies of the U. S. S. R. for their part considered there was no purpose in giving the U. S. S. R. information which she could not use during the war but which, if it had "leaked" to Germany or Japan, would have put the "Great Alliance" in mortal danger. The U. S. S. R. did not declare war on Japan until August 8, 1945, a few days before the end, and Japanese diplomats and spies remained in the Soviet Union throughout the war with Germany.

In sentencing the Rosenbergs, Judge Kaufman declared:

"I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. Committing the act of murder, the criminal kills only his victim * * * but in your case I believe your conduct in putting in the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb, has already caused, in my opinion, the Communist aggression in Korea with the resulting casualties exceeding 50,000 and who knows that but millions more of innocent people may pay the price of your treason. Indeed, by your betrayal, you have undoubtedly altered the course of history to the disadvantage of our country.

President Eisenhower, on refusing clemency, stated, "I can only say that, by immeasurably increasing the chances of atomic war, the Rosenbergs may have condemned to death tens of millions of innocent people all over the world."

The Catholic weekly, *America*, in its issue of July 11, 1953, described the crime of the Rosenbergs as one measurable only by a "new calculus: the megadeath, or death of a million human beings"—

The Rosenbergs were mortal enemies not merely of the United States but of the entire human race. They were willing slaves of a conspiracy against humanity—unrepentant to the very end. The will to execute them was an affirmation by America as the voice of humanity of its will to survive.

And to this judgment the magazine *Commonweal* on January 9, 1953, added:

The Rosenberg case focuses attention once again on the fact that communism is a profound spiritual and psychological evil as well as a conspiratorial and military force. * * * "He that loves a son or daughter more than Me is not worthy of Me." Communism has proven to be a vicious caricature of Christianity. The Rosenbergs, who were willing to betray their people, their country, and humanity itself, stand ready now to leave their own children orphans. * * *

A study of the campaign indicates that the Communists were more interested in seeing the Rosenbergs dead than in maintaining them alive indefinitely. For a limited period, the physical presence of the pair was necessary if a campaign were to be conducted at all. But, on a permanent basis, the Rosenbergs were more valuable as "martyrs." The magazine *Commonweal*, commenting on a demonstration at Sing Sing prison in December 1952, pointed out that—

The Communist leaders could find no words scurrilous enough for President Truman, the one man who can stay the Rosenbergs' execution. They have maneuvered the President into a position where if he did grant a stay it would be widely interpreted as succumbing to Communist pressure in this country and the pressure of Communist propaganda abroad—which is precisely what the United States cannot afford at this time.

But either way, the Communists could not lose. If the sentences were commuted, the Communists would have claimed the credit; if the Rosenbergs were executed, the Communists had a propaganda issue of inestimable value.

The campaign was one of tremendous sweep. In America alone, the National Rosenberg Committee reported it alone had distributed 6,000,000 leaflets and pamphlets, a half million postcards and clemency petitions, and purchased 40,000 lines of advertising in newspapers throughout the country. The National Committee also sent a total of 10 field organizers to direct activity in local areas. Their hotel and transportation expenses came to more than \$20,000. From one end of the Nation to the other rang their calumny of America, typified by the words of W. E. B. DuBois:

We are the murderers hurling mud
We are the witchhunters drinking blood.

The Rosenbergs' service to the Soviet Union began with espionage; silence and death were their final service. They betrayed their native land and maintained their allegiance to the global Communist conspiracy to which they willingly gave their names, their lives, and their children. Beyond this, they provided a rallying point for great numbers of Americans who displayed a shocking readiness to join hands with treason.

THE NATIONAL COMMITTEE

The first portents of a Communist propaganda campaign in behalf of the spies came with an announcement by the newspaper *National Guardian*, on August 8, 1951, that it would "expose the 'evidence' on which two beloved and respected American parents had been sentenced to death." A week later the *Guardian* began publication of a series of seven articles by "special correspondent" William A. Reuben entitled "The Rosenberg Conviction: Is This the Dreyfus Case of Cold War America."

Reuben, former publicity director for the American Civil Liberties Union, characterized the trial as a gigantic "frameup" resulting from the "collusion" of the FBI with a "self-confessed spy and stool pigeon," and depicted the Rosenbergs as two "innocent victims" whose "persecution" was designed to "convince the public that the Communists, or the people who can be so labeled, are by their very existence a danger to the country's security and the people's safety." In the view of Reuben and the *Guardian*, the Rosenbergs and Sobell stood as three saints against whom the judge, the prosecutor, and the FBI "intrigued to get a verdict by passion" in a contemporary equivalent to the burning of the Reichstag by the Nazis in 1933:

The facts of the arrest, trial and conviction, and sentencing of Julius and Ethel Rosenberg indicate that, at the very least, there is grave doubt in their complicity in any alleged atom spy conspiracy whatsoever; and at the very worst, that they, too, have been convicted on trumped-up evidence—not so much to silence their own two small voices of political protest, but rather to implant in the public mind with savage emphasis the belief that all holders of radical views are a menace to the Nation and to silence through mortal fear all whom dare to hold views at variance with the administration of our country.

Outside of lynch law, there is probably no more appalling example in American memory of yielding to hysteria in the face of judicial tradition and historic and scientific fact than Judge Kaufman's death sentence of Julius and Ethel Rosenberg.

The *National Guardian*, established by the American Labor Party in 1947 as a "progressive" weekly, was an appropriate vessel for serving up such fare. Although it denies having any affiliation with the Communist Party, it has manifested itself from the beginning as a virtual official propaganda arm of Soviet Russia.

In the pages of the *National Guardian*, everything emanating from the Kremlin is humane, civilized, and progressive, while the United States reeks with racial discrimination, exploitation of labor, corruption, war hysteria, and whatever else good citizens should detest. *Guardian* subscribers are assured that the United States is headed swiftly for fascism, and that Soviet Russia, which desires nothing but peace, would never employ military force to injure the United States or any other nation. Typical of the *National Guardian* was its straight-faced publication of Soviet charges that the United States Government was guilty of germ warfare in Korea. Its editor, Cedric Belfrage, a British citizen, has been deported from the United States, for which he so long and vociferously expressed his loathing. Appearing before the Committee on Un-American Activities on May 5, 1953, Belfrage refused to answer questions concerning his Communist Party member-

ship and the newspaper. Before joining the *National Guardian*, Belfrage, as a member of the Allied Psychological Warfare Branch, had been responsible for setting up the first newspapers in the Western Zone of Germany. Belfrage is also the author of "Abide With Me," described by the newspaper as a "hilarious travesty on the U. S. undertaking business."

NATIONAL COMMITTEE ESTABLISHED

On the completion of Reuben's series, the *National Guardian* announced the "spontaneous" formation of a National Committee "to defend" the Rosenbergs, with Reuben as provisional chairman. It followed this with the publication of a "fact sheet" alleging that "(1) the Rosenbergs were convicted on unsubstantial and incredible evidence; (2) the prosecution prejudiced and inflamed the jury by bringing in extraneous issues in every phase of the trial; (3) the suspicion of anti-Semitism taints the entire trial."

Records of the Chase National Bank show that a bank account for the "National Committee to Secure Justice in the Rosenberg Case" was opened on November 8, 1951. These records list Louis Harap, editor of the Communist magazine *Jewish Life*, as president; Reuben as provisional chairman; and Emily Alman as provisional treasurer. On March 12, 1952, an amended statement names Joseph Brainin as chairman, with Emily Alman continuing as treasurer and Louis Harap continuing as president.

Although the establishment of the bank account clearly indicates that the Committee had been organized at least as early as November 1951, it was not until 2 months later that the *Daily Worker*, on January 3, 1952, reported:

GROUP FORMED TO SECURE JUSTICE FOR ROSENBERGS

Joseph Brainin, well-known journalist and author, announced yesterday that 125 American men and women from all over the United States, have joined with him in forming a National Committee to Secure Justice in the Rosenberg Case.

The Rosenbergs, Ethel and Julius, were convicted in April 1951 on a charge of "conspiracy to commit espionage" and sentenced to death. To this day, they continue to assert their innocence. They are now in Sing Sing, awaiting appeal.

Among the notables who joined with Brainin in forming the committee are: Robert Morris Lovett, former Governor of the Virgin Islands, Illinois; Rev. John E. Evans, Pennsylvania; Dr. Katherine Dodd, Ohio; Frederick Blossom, Washington, D. C.; John F. Clewe, California; Lois Timmins, Connecticut; Dr. John Marsalka, Connecticut; Ivan Van Auw, Massachusetts.

Also, Prof. Edwin Berry Burgum, Capt. Hugh N. Mulzac, Rev. Spencer Kennard, Mrs. Bessie Mitchell, Dr. Edward K. Barsky, B. Z. Goldberg, John T. McManus, Dr. Gene Weltfish, William Reuben, Morris U. Schappes, all of New York.

The question naturally arises of why the *Daily Worker* required more than 8 weeks to publicize the news that the Committee had been formed. To answer it, one must review, briefly, the various stages in the development of the official Communist position on the Rosenbergs.

At the time of their arrest and during their trial, the Communist press had been completely silent. It remained so until the spies had been sentenced. Then on, April 6, 1951, under a banner headline proclaiming "Rosenbergs Sentenced to Death, Made Scapegoats for Korean War," the *Daily Worker* declared:

The judge had tried the case amid an atmosphere of war hysteria never before

trial into which the commercial press and prosecuting attorneys pumped the fullest measure of war hysteria.

Three days later, the *Daily Worker* carried a two-column editorial extending the entire length of the front page under the headline "The Meaning of the Rosenberg Death Sentence." It quoted the conservative *Jewish Daily Forward*, which, the *Worker* cried, "has applied the words 'horrible' and 'cruel' to the death sentence against Mr. and Mrs. Julius Rosenberg."

When a paper of that reactionary character finds itself compelled to speak in this manner, even amid the prevailing hysteria, that can only mean that millions of Americans, especially among the Jewish community, must feel the same way. * * *

...ple sense * * * some deep immorality here, some calculated political ... leading to hysteria and vengeance. * * *

The Court tried to justify this first-time death sentence during peacetime by manufacturing a crude political myth and a fantastic upside-down interpretation of world events. * * *

Can there be any doubt as to what has been going on in this astounding case, timed for the eve of the Supreme Court decision on the case of the framed 11 Communist Party leaders for opposing the war in Korea?

It is a myth that the Soviet Union "stole" the "secret" of atomic science from us. * * * The notion that the Rosenbergs "turned the A-bomb over to Russia" is based on abysmal ignorance and is aimed at manufacturing a myth.

Secondly, it is a myth that the Soviet Union plans atomic war upon us. On the contrary, it is Washington which brandishes the A-bomb in the face of mankind, just as it used it against the helpless Japanese city without the slightest military justification. * * *

What Judge Kaufman is doing is to use the alleged espionage of 2 Jewish citizens to turn the hatred of the families of 57,000 American casualties away from the warmakers in Washington toward "Jews and Communists."

Not since the days when the Czar fomented pogroms, and the Nazis explained the sufferings of Germany in the same fashion, has this pogrom tactic been so brazenly used.

All official Communist statements, from the date of sentencing until the announcement of the formation of the National Committee in the *Daily Worker* in January 1952, refrained from any assertion of innocence. "It was safe enough for the Communist press which had been silent about the Rosenberg case," Dr. Fineberg commented, "to denounce the death sentence so long as it maintained a reticence concerning their guilt. It was necessary to examine the convicted pair's conduct, both at the trial and subsequently, before deciding whether to treat them as martyrs or as scoundrels."

The situation was this: The Soviets had to make certain that the Rosenbergs would continue their allegiance even in the face of death, for obviously the Party could not risk the possibility of a confession by the spies in the midst of a campaign on their behalf. Apart from the danger of confession, the Soviets similarly could not be certain as to what further corroborative evidence had been unearthed by the Government in regard to other members and activities of the espionage ring not divulged by the Rosenbergs or disclosed during their trial. Revelation of this during a campaign for the spies would have had the same embarrassing effect as a confession for the Communists and the Soviet Union.

With these should be mentioned a third consideration. The Party at this time was involved in various fund-raising ventures of a very immediate nature. For example, it had set a goal of raising some \$200,000 nationally for the "defense" of the Communist leaders convicted of violating the Smith Act, and it was urgently appealing for money to insure the continued publication of the *Daily Worker*.

By January 1952 the questions about the Rosenbergs had apparently been resolved. The Kremlin strategists were able to conclude that they "are completely devoted fanatical worshippers at our shrine, the kind that make excellent incense on our funeral pyres! They face the possibility of death for atomic espionage and yet remain silent whenever an answer would open a way toward disclosing other Communist plotters."

Not only could the Rosenbergs be considered as "safe." They could be counted on to supply a continuous flow of propaganda material and to lend their names willingly, even eagerly, to the worst invective that the Party could devise against the United States, its Government, and its institutions.

If the Communists, needing martyrs and having none available, had deliberately set out to create them, the final product would have certainly been identical to the Rosenbergs. The two spies spoke and felt in the language of the *Daily Worker*. Their writings and statements from their prison cells show that they never deviated in their fealty to communism.

Even more important, the perverted thinking which led to their ultimate doom eliminated the distinction between patriotism and treason. They were "victims of tyranny and political victims of the cold war," embarked, as Ethel described it, on a "history-making journey." Yet the Rosenbergs proclaimed that they were loyal to the nation that they had betrayed. This was more than an anomaly or a lie for in the minds of the Rosenbergs—and this perhaps was the most frightening single factor to emerge in all the avalanche of propaganda—treason was in fact the highest form of loyalty. Dr. Fineberg provided a pungent analysis of this:

The Rosenbergs' double standard of loving and working for the Soviet Union, while proclaiming allegiance to the United States, is more than inconsistent or illogical. It was a combination of self-delusion and dissembling. For them the triumph of the Soviet Union was the supreme good for every person and nation. In their view none could be better off than the Poles, the Roumanians, the Czechs or any other peoples within the Soviet orbit. Who in their opinion could be more faithful to a nation than those who worked to bring about its communization?

THE SPONSORS

There were 36 sponsors of the National Committee, all but five of whom had previous records of pro-Communist activity. The complete list comprised:

Nelson Algren—author; identified as a Communist by Louis Budenz, who stated he was a member of the Party commission which tried and acquitted Algren of "Trotskyism."

Herbert Aptheker—member of the Executive Board on the Council of African Affairs; speaker at various functions of the Communist Party; instructor at the Communist Jefferson School of Social Science from 1946 to 1953; sponsor of the founding conference of the Civil Rights Congress; associate editor of *New Masses*, and editor of its successor, *Masses and Mainstream*; voluminous contributor to the official Party organs, the *Daily Worker* and *Political Affairs*; defense witness in the Smith Act trial of Communist leaders in New York and Philadelphia; witness for the Communist Party before the Subversive Activities Control Board, where he admitted that he was a member of the Communist Party during the time he served as an intelligence officer in the

United States Army and later as education and information officer for the Seventh Army in Europe after the war; discharged from the rank of major; major United States Army Reserve, on December 28, 1950.

Ivan Von Auw—signer of an open letter to then Attorney General J. Howard McGrath on behalf of four jailed trustees of the bail fund of the New York Civil Rights Congress; named by the *Daily Worker* of January 3, 1949, as signer of a statement demanding abolition of the Committee on Un-American Activities.

Dr. Edward K. Barsky—identified as a member of the Communist Party; chairman of the National Committee To Win Amnesty for Smith Act Victims; national chairman of the Joint Anti-Fascist Refugee Committee and convicted and imprisoned for contempt of Congress for refusing to produce the records of this organization before the Committee on Un-American Activities; member of the Medical Advisory Committee of the China Welfare Appeal, Inc.; member of the Executive Committee of the Citizens Emergency Defense Conference; sponsor of the National Committee To Win the Peace; chairman of a rally in honor of Soviet agent Steve Nelson, sponsored by the Civil Rights Congress; physician to Comintern agent Gerhard Eisler and named by Eisler as a reference on his passport application.

Prof. Edwin Berry Burgum—chairman of the National Council of the Arts, Sciences, and Professions; sponsor of the Scientific and Cultural Conference for World Peace; sponsor of the New York City Civil Rights Congress and the Schappes Defense Committee; member of the Board of Directors of the American Council for a Democratic Greece; chairman of the League of American Writers; instructor at the Jefferson School of Social Science; sponsor of a Civil Rights Congress statement defending the Communist Party; member of the New York University chapter of the Citizens Victory Committee for Harry Bridges; signer of a plea to President Roosevelt by the Citizens Committee To Free Earl Browder; identified before the New York State Joint Legislative Committee as leader and later chairman of the Communist fraction of Teachers Union, Local No. 5; affiliated with the National Committee for People's Rights, American Committee for Spanish Freedom, Reichstag Fire Trial Anniversary Committee, China Welfare Appeal, Inc., National Nonpartisan Committee to Defend the Rights of the Twelve Communist Leaders, Citizens Emergency Defense Conference and the International Labor Defense; dismissed from the faculty of New York University in March 1953; invoked the Fifth Amendment in regard to Communist activities at hearings before the United States Senate Subcommittee on Internal Security October 13, 1952; Professor Burgum's conception of proper judicial procedures may be adduced from his public support of the 1937 Moscow purge trials.

Alice Hill Byrne—signer of a Communist-sponsored letter calling for the repeal of the McCarran-Walter law; signer of appeals requesting amnesty for Communist leaders convicted for violation of the Smith Act; affiliated with the American Committee for Protection of Foreign Born.

John F. Clewe—an initiating sponsor of the Communist American Peace Crusade and member of the Steering Committee of the Southern California Peace Council; signer of a statement in behalf of the convicted "Hollywood Ten"; sponsor of a "Rededication to Democracy" dinner in Los Angeles which was part of a nationwide drive by the Civil

Rights Congress to raise \$60,000 for the defense of persons "victimized by the Smith and McCarran Acts."

Rev. I. C. Collins.

Rabbi Abraham Cronbach—a member of the National Council of the American Peace Mobilization, created to effectuate Communist strategy in the United States during the Hitler-Stalin pact; sponsor of the Committee for Citizenship Rights, organized to defend the interests of the Communist Party; sponsor of the American Committee for Protection of Foreign Born and signer of a statement issued by that organization in behalf of Gerhard Eisler; reported by the Communist Committee for a Democratic Far Eastern Policy as favoring recognition of the Communist Chinese Government; sponsor of the School of Jewish Studies, cited by the Attorney General as an "adjunct of the Communist Party in New York City"; sponsor of the Scientific and Cultural Conference for World Peace, the American Peace Crusade, and the American Continental Congress for Peace; signer of various appeals and petitions in behalf of convicted Communists.

Prof. Ephraim Cross—member of the American Committee for Democracy and Intellectual Freedom; signer of an appeal for amnesty for the convicted Communist leaders; sponsor of the American Committee for Protection of Foreign Born; member of the Executive Committee of the Citizens Emergency Defense Conference; affiliated with Citizens Committee To Free Earl Browder, Citizens Victory Committee for Harry Bridges, National Federation for Constitutional Liberties, Council for Pan-American Democracy, Council on African Affairs, Schappes Defense Committee, Civil Rights Congress, and the National Nonpartisan Committee to Defend the Rights of the Twelve Communist Leaders.

Marjorie DiSilva.

Katherine Dodds—sponsor of the Emergency Civil Liberties Committee; signer of an open letter in behalf of the New York Civil Rights Congress bail fund trustees; affiliated with the American Committee for Protection of Foreign Born.

Dr. W. E. B. DuBois—actively associated with the National Council of American-Soviet Friendship subsequent to its citation as Communist and subversive; sponsor of the National Committee to Win Amnesty for Smith Act Victims, American Committee for Protection of Foreign Born, the Civil Rights Congress, and the Committee for a Democratic Far Eastern Policy; member of the Board of Directors of the China Welfare Appeal, Inc.; member of the Executive Committee of the Citizens Emergency Defense Conference; member of the Executive Board of the Council on African Affairs; chairman of the National Conference on American Policy in China and the Far East; member of the faculty of the Jefferson School of Social Science; member of the presidium of the Communist World Peace Conference and co-chairman of the Paris World Congress for Peace; member of the Citizens Committee To Free Earl Browder; member of the Advisory Board of the Southern Negro Youth Congress; vice chairman of the National Council of the Arts, Sciences and Professions; director of the Peace Information Center in New York; active in the defense of such Communists as Alexander Trachtenberg, V. J. Jerome, Ben Gold, Gerhard Eisler, Harry Sacher, Philip Foner, and Simon Gerson.

Gertrude Evans—identified as a Communist Party member by Thomas G. Sampler, Henry Thomas, and Dorothy K. Funn, and named by Mary Stalcup Markward as a Communist Party member assigned to the Civil Rights Club of Washington; executive secretary of the Progressive Party, Washington, D. C.; member of the Washington Book Shop and the Washington Committee for Democratic Action; sponsor of the American Peace Crusade; refused to answer questions concerning Communist Party membership on grounds of self-incrimination in hearings before the Senate Permanent Subcommittee on Investigations on August 18, 1953.

Waldo Frank—consistent defender of the Communist Party and writer for various Communist publications; affiliated with Friends of the Soviet Union, Civil Rights Congress, International Labor Defense, League of American Writers, National Committee for People's Rights, National Committee for the Defense of Political Prisoners, National Council of American-Soviet Friendship, National Federation for Constitutional Liberties.

Joseph Friedman—member of the Communist-created American League for Peace and Democracy.

John T. Gojack—president of the Fort Wayne District Council No. 9 of the United Electrical Workers, one of the unions expelled from the CIO because of its domination by Communists; affiliated with the Civil Rights Congress and the American Peace Crusade; sponsor of the National Conference To Win Amnesty for Smith Act Victims. Appearing before the Committee on Un-American Activities on February 28, 1955, Gojack refused to affirm or deny that he has been "part and party to the international Communist conspiracy."

B. Z. Goldberg—member of the Board of Directors of the National Council of American-Soviet Friendship subsequent to its citation as subversive; member of the Executive Council of the Citizens Emergency Defense Conference; affiliated with the American League Against War and Fascism, Civil Rights Congress, Joint Anti-Fascist Refugee Committee, Conference for Peaceful Alternatives to the Atlantic Pact, and the School of Jewish Studies.

Shirley Graham—wife of W. E. B. DuBois; member of the Board of Directors of the National Council of American-Soviet Friendship subsequent to its citation; sponsor of the National Committee to Repeal the McCarran Act; contributing editor of *Masses and Mainstream*; affiliated with Council on African Affairs, National Council of the Arts, Sciences, and Professions, Civil Rights Congress, Committee for a Democratic Far Eastern Policy, Committee for the Negro in the Arts, American Peace Crusade, Joint Anti-Fascist Refugee Committee, Washington Cooperative Book Shop; sponsor of testimonials and dinners for such known Communists as Benjamin Davis, V. J. Jerome, Mike Gold, and Harry Sacher.

Nahum Greenberg.

Louise Harding Horr—endorser of the Communist World Peace Appeal.

Rev. J. Spencer Kennard, Jr.—editorial adviser of the pro-Communist religious publication *The Protestant*; member of the Board of Directors of the Committee for a Democratic Far Eastern Policy; affiliated with American Peace Crusade, New York Council of

Arts, Sciences, and Professions, Council of Greek Americans, American Committee for Protection of Foreign Born.

James Imbrie—initiating sponsor of the American Peace Crusade; vice chairman of the Citizens Emergency Defense Conference; chairman of the New Jersey Progressive Citizens of America and of the Progressive Party of New Jersey; Progressive Party candidate for Governor of New Jersey, and quoted by the *New York Times* of September 30, 1949, in connection with his candidacy as declaring that he was "proud to have stood and worked with Communist leadership and will continue to do so." In October 1949 he refused to sign a loyalty oath required of candidates for public office in New Jersey.

Robert Morris Lovett—one of the country's most active Communist-front participants; an initiator of the National Committee to Repeal the McCarran Act; member of the Board of Sponsors of the National Emergency Conference for Democratic Rights, a sponsor of the National Federation for Constitutional Liberties; honorary chairman of the National Council of the Arts, Sciences, and Professions; member of the Advisory Board of the American Committee for Protection of Foreign Born; sponsor of the American Peace Crusade; member of the National Council of the League of American Writers, and the National Committee of the International Labor Defense; member of the Advisory Board of the American Student Union; national vice chairman of the American League for Peace and Democracy; active in committees organized for the "defense" of such Communists as Alexander Trachtenberg, V. J. Jerome, Steve Nelson, and Marion Bachrach; consistent opponent of anti-Communist legislation and of prosecution of Communist conspirators; defender of the Moscow purge trials.

Dr. Bernard Lubka.

Dr. John Marsalka—president of the American-Slav Congress; sponsor of the American Committee for Protection of Foreign Born and of the National Conference to Win Amnesty for Smith Act Victims, the American Peace Crusade and the Paris World Peace Congress; affiliated with the Civil Rights Congress and the Joint Anti-Fascist Refugee Committee; fired from the faculty of Yale University in 1949.

John T. McManus—General Manager of the *National Guardian*; New York gubernatorial candidate of the Communist-dominated American Labor Party in 1950 and 1954; initiating sponsor and member of the Board of Directors of the Independent Citizens Committee of the Arts, Sciences, and Professions; member of the Executive Board of the Joint Anti-Fascist Refugee Committee; sponsor of the Scientific and Cultural Conference for World Peace, the Voice of Freedom Committee, Artists Front to Win the War, and the Citizens Emergency Defense Conference—organized for the defense of Communists arrested for violation of the Smith Act; instructor at the Jefferson School of Social Science; sponsor of the 1952 National Conference of the American Committee for Protection of Foreign Born and the National Committee to Win Amnesty for Smith Act Victims; signer of a statement issued by the National Federation for Constitutional Liberties endorsing the granting of commissions in the armed forces to Communist Party members.

Bessie Mitchell—sister of Collis English, one of the "Trenton Six" Negroes whose prosecution for murder was made into a major Communist campaign; supporter of New York Councilman Benjamin J. Davis, one of the 12 Communist leaders convicted under the Smith Act; active in the Harlem Trade Union Council and the Civil Rights Congress.

Capt. Hugh N. Mulzac—chairman of the New York Committee of the American Committee for Protection of Foreign Born; sponsor of the National Non-Partisan Committee to Defend the Rights of the Twelve Communist Leaders and the Bill of Rights Conference; vice chairman of the Citizens Emergency Defense Conference; member of the National Advisory Board of the United Negro and Allied Veterans of America, Inc.; affiliated with the American Peace Crusade, Council on African Affairs, and the Harlem Trade Union Council.

William Reuben:

Dr. John L. Simon—battalion doctor of the Communist-controlled Abraham Lincoln Brigade in the Spanish Civil War; chairman of the Committee to Defend Lincoln Brigade Veterans sponsored by the Veterans of the Abraham Lincoln Brigade; leader of a delegation to the White House on behalf of convicted Communist leaders Robert Thompson and John Gates.

Leon Straus—identified as a member of the National Veterans Commission of the Communist Party; discharged from United States Army Officers Reserve Corps in 1950 "under other than honorable conditions"; executive secretary of the Joint Board of Fur Dressers and Dyers; vice president of the International Fur and Leather Workers, one of the Communist-dominated unions expelled from the CIO; sponsor of the American Committee for Protection of Foreign Born, the National Committee to Win Amnesty for Smith Act Victims, the California Labor School; secretary of the Trade Union Committee for the Defense of the Communist Twelve; listed by the *Daily Worker* of November 6, 1951, as a speaker at a mass rally commemorating the 34th anniversary of the Soviet state, sponsored by the National Council of American-Soviet Friendship; affiliated with the American Peace Crusade, the Civil Rights Congress, Citizens Committee to Free Earl Browder, International Workers Order, National Labor Conference for Peace.

Lois Timmins—identified by the *Daily Worker* as one of the members of Local 19 of the Social Service Employees Union, United Office and Professional Workers, who sent May Day greetings to the Communist newspaper.

Elizabeth Todd (Betty Malcom)—identified by her former husband as a member of the Communist Party in Nashville, Tenn., signer of Communist Party nominating petitions for Benjamin Davis for the City Council of New York in 1945; refused to answer questions regarding Party membership on the ground of self-incrimination in an appearance before the Committee on Un-American Activities on April 21, 1950.

Dr. Leonard Tushnet—trustee of the New Jersey Civil Rights Congress Bail Fund.

Dr. Gene Weltfish—discharged from the faculty of Columbia University in 1953 for refusing to answer questions regarding Communist Party membership; president of the Congress of American Women; vice president of the Women's International Democratic Federation; member of the Executive Board of the Council on African Affairs; sponsor of the American Youth for Democracy, the American Peace Crusade, Committee for a Democratic Far Eastern Policy, American Committee for Protection of Foreign Born, and Civil Rights Congress; member of the Board of Directors of the American Council for a Democratic Greece; affiliated with the National Negro Congress, the Joint Anti-Fascist Refugee Committee, the American Slav Congress, Veterans of Abraham Lincoln Brigade, the Bill of Rights Conference, the International Workers Order, and the National Council of American-Soviet Friendship subsequent to its citation by the Attorney General; one of the active participants in the Communist campaign to publicize the "truth" that the United States was using germ warfare in Korea; co-author with Ruth Benedict of "The Races of Mankind," a propaganda tract which the House Military Affairs Committee ordered banned from all United States Army libraries.

DIRECTORS OF THE CAMPAIGN

The chairman of the Committee was Joseph Brainin, a writer who uses the pseudonym of Phineas J. Biron. Although at the time he applied for a passport in December 1946, he filed an affidavit swearing, "I am not and never have been a member of the Communist Party." Brainin has given long service to the Kremlin. Born in Russia June 19, 1895, Brainin immigrated to New York in March 1911 and resided there until 1918, when he volunteered in the Royal British Army. He resumed residence in America in October 1919 and was naturalized on February 10, 1937. He was a sponsor of the School of Jewish Studies, the National Conference on American Policy in China and the Far East, and the American Peoples Congress staged by the American Peace Crusade. He was a member of the American sponsoring committee of the Communist-directed World Congress for Peace in Paris in 1949; associate editor and member of the Board of Directors of *The Protestant* magazine; and chairman of the U. S. A.-U. S. S. R.-Palestine Friendship Dinner in 1947. In his columns, he has been a consistent proponent of Communist organizations and policy, and has vigorously attacked all measures aimed at the control and eradication of the Communist conspiracy. An example of his political orientation may be found in his comparison of the McCarran Security Act and the McCarran-Walter Immigration Act to the notorious Nazi Nuremberg racist laws.

While Brainin provided the Communists with a powerful voice in some quarters of the Jewish community, the active leadership of the National Committee was in the hands of David Alman, the executive secretary, and his wife, Emily Alman, who was treasurer of the National Committee and simultaneously, executive secretary of the New York Committee. Disregarding the titles, one may speculate on which of the Almans carried more weight within the organization itself. More than mere facetiousness is indicated, perhaps, by David's remark at the hearings of the Committee on Un-American Activities on August 4, 1955: "Within my memory, I have never contradicted any statement made by my wife."

Before joining the Rosenberg Committee, David¹Alman was a paid employee of such Communist undertakings as the American Council for a Democratic Greece, the New York Civil Rights Congress, and the American Peace Crusade. He was secretary of the Lawyers Defense Committee, organized in behalf of the attorneys whose conduct in the Smith Act trial of the 11 Communist leaders resulted in their prosecution for contempt of court. He was also a member of the fund-raising campaign for the *Daily Worker* and a frequent contributor to that official Communist organ; and signer of a Civil Rights Congress statement in behalf of Communist leaders.

Alman also wrote several novels, which were lavishly praised in the Party press, but had little circulation outside the ranks of the faithful. The first glint of Alman's professional qualifications for managing the Rosenberg Committee can possibly be discerned in his novel "The Glass," written—in the description of *Mainstream*—"to destroy the morality that has plunged the Jim Crow South into an orgy of cruelty of animalistic wrath." The story deals with rape of a Negro woman by three white men and the denial of justice by a "packed jury." His political sentiments in general may be gauged by his description of an alleged Greek concentration camp as "Truman's monument"—established by the Greek Government "coincident with the arrival of [Ambassador] Griswold, Coca-Cola and cash." Even more indicative is an open letter written by Alman to the notorious Communist author, Howard Fast, and published in the *Daily Worker* of June 14, 1950: "Everyone feels badly * * * at your going to prison but above and beyond that, there is a sense of great pride that one of our own has become such a giant." [Italics added.]

One of Emily Alman's claims to notoriety prior to the Rosenberg campaign was her arrest after an altercation with a policeman en route to a "peace crusade" rally in Washington on March 15, 1951.

In addition to the Almans, the National Committee management included Aaron Schneider, executive secretary of the New York Committee and organizational director of the National outfit; Don Rothenberg, the Washington representative; and Helen Sobell, wife of Morton Sobell.

Schneider was a former vice president of the Greater New York Industrial Council and a member of the General Executive Board of the United Office and Professional Workers, expelled from the CIO as a Communist-dominated union. He was a sponsor of the New York State Civil Rights Congress, an instructor at the Communist Jefferson School of Social Science, and a member of the Citizens Committee to Free Earl Browder. The *Daily Worker* of March 12, 1947, lists him as a signer of a protest against outlawing the Communist Party; and in the *Daily Worker* of February 17, 1948, he is named as a participant in a public demonstration staged by the Communist American Council for a Democratic Greece.

Don Rothenberg was identified by Mary Markward in testimony before this Committee on June 11, 1951, as a Communist Party member while a student at George Washington University. Mrs. Markward described him as "acutely security conscious" and said he insisted that his membership be known "only to the top leadership of the Party." Rothenberg has also been identified as director of community organization of the Communist-controlled Southern Conference for Human Welfare; youth director of the Ohio Wallace Committee; and,

more recently, secretary of the Ohio Progressive Party. Rothenberg gained prominence of a dubious sort on October 27, 1948, when he was arrested for carrying a shotgun while picketing President Truman's hotel in Cleveland. The Associated Press reported that the shotgun turned out to be empty and said Rothenberg explained that it was a prop in a tableau of "Wall Street Leading the Democratic and Republican Parties into the Next War." The news service said that Rothenberg identified himself as executive director of the Young Progressives of Ohio, 30 members of which were staging the demonstration to protest the Federal loyalty investigations ordered by the President. Max Farrington, director of men's activities at George Washington University, commented in a memorandum to Dean Jarman, "Here is [Rothenberg] again in a characteristic pose."

Mrs. Sobell, a Communist functionary in her own right, was former membership secretary of the Communist Party of the District of Columbia.

The National Committee further extended its scope through the establishment of such auxiliary units as the National Labor Committee to Secure Justice for the Rosenbergs, Professionals for Clemency, and the Emergency Committee of the Arts and Professions to Secure Clemency for the Rosenbergs. The only public appearance of this last-named group was the insertion of full-page advertisements in the *Washington Star*, the *St. Louis Post Dispatch* and the *Los Angeles News* on January 5, 1953. These listed Dr. Clemens J. France as chairman and Bernard Gersten as secretary-treasurer, and requested contributions to be sent to its offices, 108 West 44th Street, New York.

At its peak, the National Committee's staff numbered 10 full-time employees in the New York office and a full-time salaried representative in Chicago. The National Committee also paid salaries of various Committee workers in Boston, New Jersey, Washington, D. C., and Philadelphia.

The New York headquarters staff included Norma Aronson, one-time assistant regional director of United Office and Professional Workers and president of the union's Local No. 16; Eugenia Pennington, listed by the *Daily Worker* as executive secretary of the Chelsea Tenants Council and secretary of the Houston Neighborhood Council; Olive Sutton, staff writer for such official Communist publications as *Mainstream* and *Political Affairs*, and an editor of *News from Greece, Incorporated*. A specialist on Greek events—Soviet version—she is the author of "Murder Incorporated in Greece"; Henry Lieberman, one time president of the United Public Workers of America; Betty Barnett; Bernard Bach; Sonia Applebaum; Lenore Pine; Harriet Gordon, paid staff worker of the National Wallace for President Committee; and Paul Dietrich.

One of the most significant aspects of the Rosenberg campaign was the comparative youth of so many of its directors: the Almans; Schneider; Don Rothenberg; Herman Tamsky; Sue and Phil Koritz in Boston; John Gilman in Milwaukee; and Josephine Granat in Chicago. Of a younger generation than Brainin and Harap, they represent the group which the Party is grooming for leadership in the future. The Rosenberg campaign provided them with excellent field training.

Although stationery and literature of the Committee lists the officers and sponsors of the "National Committee", nowhere is there a single indication of the existence of any actual committee. What emerges is the picture of a group of individuals who, with the approval of the Communist Party, simply appointed themselves to their positions without any provision for review of their policies or activities by the people who across the nation were contributing more than a half million dollars in response to their appeals. One may well wonder whether the Kremlin, which lays claim to the invention of so many firsts, may not rightly take credit for the conception and perpetration of one of the biggest swindles in the history of the United States.

THE CAMPAIGN GETS UNDERWAY

Despite a lack of publicity in the Communist or in the non-Communist press, the National Committee appears to have been already well established by the time its formation was announced by the *Daily Worker* in January 1952. An advertisement in the *National Guardian* of January 16 sums up the accomplishment to that date:

A MOTHER WRITES FROM THE DEATH HOUSE

We said, and we say again, that we are victims of the greatest type of political frameup ever known in America.

FOR YOUR COURAGE

We thank the editors of *National Guardian* for their articles revealing the gross injustice perpetrated in the Rosenberg case.

FOR YOUR HUMANITY

We thank the many hundreds of *Guardian* readers who responded so magnificently to our appeal for funds and sponsors to help secure justice in the Rosenberg case.

YOUR SUPPORT HAS MADE POSSIBLE

Establishment of a national office at 246 Fifth Ave., N. Y. C.
Publication in pamphlet form of William A. Reuben's *Guardian* articles (25,000 sold and paid for in 3 weeks; 25,000 more now on the presses).
Preparation of a compelling fact sheet for national distribution.
Activity from Maine to California.
Preparation of a nationwide speakers' tour.
Preparation for big public meetings in major cities in the next 2 months.
Advertisements in major English and Yiddish newspapers around the country, some of which have already been placed.
Payment of certain legal expenses.
A happier holiday for the Rosenberg children.
Establishment of a national committee * * *

BUT WE HAVE JUST BEGUN TO ACT!

Write to President Truman, Attorney General McGrath, and your Senators—ask that the verdict and sentence be set aside. Contribute funds for the committee. Order pamphlets; ask for speakers.

After the rejection of the first Rosenberg appeal by the Circuit Court of Appeals in February 1952, the campaign began to gather momentum. This started a pattern which was to be followed unaltered until the execution a year and a half later: Each reversal in the courts brought a proportionate increase in the volume of the fraudulent screams of injustice and persecution. On February 28, 1952, the *Daily Worker* summarized the Communist propaganda motifs up to that point:

THE ROSENBERG FRAMEUP

THE ROSENBERG CASE is a ghastly political frameup. It was arranged to provide blood victims to the witchhunters, to open the door to new violence, anti-Semitism, and court lynchings of peace advocates and Marxists as "spies."

The war-hungry witchhunters consider all opponents of their war-made policies—of whatever tendency, Marxist or otherwise—as "spies" and "potential spies." The judicial lynching of the Rosenbergs can mean a wave of frameups against citizens of every political belief if they cross the path of the McCarthyites and the McCarrans raving for victims.

There is not one iota of evidence to show that the Rosenbergs committed the fantastic "crime" for which they have been made the first victims in the entire history of the United States to face death on these charges. * * *

* * * THE "ATOMIC SECRET" is a newspaper headline myth. There never was such a "secret." In the second place, Soviet science had mastered atomic energy long before the Hiroshima massacre; it did not need the scribbles of an Army sergeant on a matchbox to explain the intricate problems of atomic power. Even the science editor of *Life Magazine* showed that this Sergeant's "atomic drawing" was a weird and unworkable contraption * * *

* * * THE GOVERNMENT HAS patched up this frameup to sell the fraud that a belief in Marxism, friendship with the Soviet Union, or membership in the working class Communist Party is to make one a "spy" or a "potential spy." This was the meaning of the Bentley performance * * *. The Government has no evidence, and could never have any evidence that working class Marxist activity for peace, democracy, and socialism constitutes "espionage." The Government is compelled to manufacture this myth; the Rosenbergs are the sacrificial victims for it.

As is always the case in the advance of this Fascist-style brutality, the Rosenbergs will not be the last victims if it is not halted by the country now. The blood of the Rosenbergs is intended to pave the way for McCarran's concentration camps, for the roundup and murder of political leaders of all views, and for the arrest and judicial murder of any political opponents of the McCarthy's, McCarran's, and the war plotters. The Rosenberg defense committee should unite citizens of all views in halting this revolting injustice. President Truman should get demands from the whole country for a halt to this judicial lynching.

On March 12, 1952, the largest rally up to that time was staged at New York's Pythian Hall. Official reports on the size of the audience indicate the basic difficulty with facts evinced by the Committee and its proponents throughout the campaign. The *Daily Worker* announced "1,000 Jam Hall." The National Committee, in a letter dated March 15, reported, "2,000 persons, 600 of them unable to gain admission, jammed the meeting hall." (The Committee failed to explain, how the 600 who failed to gain admission were able to "jam" the place.)

The *Daily Worker* reported that the audience "was moved to tears" by Mrs. Sobell, who added a new word to the campaign vocabulary by describing the trial of the Rosenbergs and her husband as a "massacre." Other speakers were William Reuben; Rabbi Louis D. Gross, editor of the *Jewish Examiner*; Joseph Brainin, the meeting chairman, who charged that "truth was strangled in the courtroom"; Mary Van Kleek, who denounced the death sentence as a "cruel revelation of breakdown in the hard-won safeguards of the American system of justice"; Mrs. Bessie Mitchell, B. Z. Goldberg, and the Reverend Spencer Kennard, Albert E. Kahn, Communist author who has used the soviet secret police as a collaborator, read a "message from the death house," in which the Rosenbergs proclaimed: "We are innocent * * *. We are an ordinary man and wife, and it is inevitable that ordinary people would be grievously persecuted by the history of the past few years * * *. We are in the death house today as a warning to all ordinary men and women like ourselves that there are forces today which hope to silence by death those who speak for

peace and democracy." The rally voted to adopt March 28 as "Rosenberg Day" for telegraphing and telephoning the White House with demands for a new trial. It also adopted an "Amicus Brief" (reproduced opposite) to be signed by individuals and organizations and submitted to the Supreme Court.

Typical of the meetings being held throughout the country was one held in Los Angeles on April 14, 1952. It was described as follows by Frederick A. Schreiber, area director of the American Jewish Committee, in a letter to Dr. Fineberg:

Last night, before an audience of several hundred people, Julius and Ethel Rosenberg were tried in absentia on charges of espionage. The Rosenbergs were acquitted, but the attorney who prosecuted them and the judge who presided at their trial were found guilty.

Reverend Carl L. Crain, a minister of Long Beach, opened the meeting by complimenting the audience on their courage to come to an assembly of this kind.

The next speaker was William Reuben. He spoke for nearly an hour, presuming to give the facts in the case. I will not go into the kind of "facts" that he presented.

Next on the program was a Mr. George Schibley, of Long Beach, who introduced a recording of a talk made by Mrs. Morton Sobell. The essence of Mrs. Sobell's recording was that Max Elitcher, upon whose testimony Morton Sobell was convicted, is a worm of the lowest order, not only because he told dirty lies about Sobell and about the Rosenbergs, but because after he gave his testimony he had the audacity to buy Mrs. Sobell's furniture which he and his wife are now enjoying.

Following this, Schibley again took the microphone and compared the current atomic spy trials to the witchcraft trials in Salem. Here, for the first time, was introduced an anti-Semitic overtone, as Schibley pointed out that the Rosenbergs were convicted for only three reasons: (1) because they were "progressives," (2) because they are Jews, and (3) because the Government needed a scapegoat. Schibley then conducted a fund-raising session, which resulted in a pledge of \$1,000 from the Long Beach Committee and, in addition, contributions amounting to about \$600.

The next speaker was Rabbi Franklin Cohn of the Kadimah Temple in Los Angeles. Rabbi Cohn really went to town on the thesis that the whole trial was a frameup; that these poor Jews were sacrificed; and that the prosecuting attorney and judge exacted the severest possible sentence to show that they are super Jews, tools in the employ of the real perpetrators of this outrage—namely, President Truman, Howard McGrath (then Attorney General), and T. Lamarr Caudle. (I don't quite understand why Caudle was thrown in, but he was.) Cohn's main thesis consisted of a comparison between the Reichstag fire trial of Van der Lubbe and the atomic spy trials. In Germany, the attack was made first upon the Communists, as it is being made in this country today. Then, it was made upon organized labor, as is occurring here by virtue of the Taft-Hartley Act. Afterward, in Germany, the attack was switched to Jews, and this will probably be the next focal point in this country, unless the people are more wide-awake than they were in Germany and will use the freedoms that they have while they still have them in order to change the situation.

Although there was supposed to be a question and answer period, at 11:15 p. m. the audience was too exhausted and, as soon as Cohn was finished speaking, everybody trooped out.

I neglected to add that there was also a special message from Ethel Rosenberg, delivered by a Mrs. Olive Tomson, who was introduced as a former official of the United Electrical Workers.

From the time the Committee was organized until the fall of 1952, the campaign consisted primarily of the distribution of literature and more or less local rallies. The chief handicap during this time, as Dr. Fineberg pointed out, seemed to be that while the Committee had plenty of "second- and third-string voices in the Save-the-Rosenberg chorus, no non-Communist or anti-Communist of prominence could be dubbed in even by transcription. * * * The Committee could have used the name of any famous Communist, but the most important

AMICUS BRIEF^{*} in the ROSENBERG CASE

WE BELIEVE that the trial of Julius and Ethel Rosenberg and Morton Sobell on a charge of conspiring to commit espionage, which resulted in death sentences for the Rosenbergs and a 30 year sentence for their co-defendant, lacked guarantees of fairness which all Americans have a right to expect under the Constitution.

WE BELIEVE that the Prosecutor and Trial Judge permitted fear and prejudice to dominate the trial by 1) attributing to the defendants social beliefs which are today the target of virtually every public tribunal, and 2) attributing to them reversals and casualties suffered in Korea.

WE BELIEVE that transient political and social passions have no place in our courts, that to deprive even one American of the right to a fair trial is to injure the rights of all Americans.

WE THEREFORE authorize the inclusion of our names in an Amicus Brief to the Supreme Court of the United States, petitioning that the verdicts and sentences be set aside, and that a new trial be ordered based on Constitutional guarantees of impartiality and fairness in accordance with the best traditions of American justice.

Name	Address	City	State
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Please return to: NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE, 246 5th Avenue, New York 1, N. Y., MU 5-2144.

Name of person returning this Amicus _____

Address _____ City and State _____ Organization _____

^{*}Signers of an Amicus Brief act as friends of the court, petitioning because they believe an important principle is at stake.

single requirement for success was to make the entire explosion appear to be proceeding from non-Communist sources." As a result, "typical songsters in the pro-Rosenberg medley were an utterly uninfluential rabbi of a Brooklyn congregation, Meyer Sharff, who was billed as 'world renowned'; Jean Taylor, equally obscure, but described as a 'Negro civil rights leader'; Ephraim Cross, an unknown in Jewish circles, whom the Committee glorified as a 'leading opponent of anti-Semitism'; Yuri Suhl, 'poet and novelist'; Sol Tishler, 'East Side leader'; Rose Sobell, 'mother' [of Morton Sobell]"; and the Committee stalwarts, Brainin, Reuben, and the Almans.

REBUFFS TO THE CAMPAIGN

During this period, the Committee suffered two reverses. One lay in the efforts to introduce a genuine civil-liberties note; the other, in the attempts to harness legitimate Jewish organizations to the Communist caravan.

On May 2, 1952, the American Civil Liberties Union, through its staff counsel, Herbert M. Levy, issued a memorandum repudiating every one of the Communist arguments and summarily denying that there had been any violation of civil rights in the Rosenbergs' trial and sentence. Almost simultaneously the National Community Relations Advisory Council, representing every major Jewish organization in the United States, denounced the Rosenberg Committee for its attempts to "inject the false issue of anti-Semitism into the Rosenberg case."

The Civil Liberties Union amplified its position the following December in a six-point statement which declared, "We limit ourselves to issues involving civil liberties and we find no such issues in this case." The ACLU answered the Communist charges one by one and in full:

1. It is argued that the sentence of death for espionage is unprecedented. Assuming this, the sentence is not so disproportionate to the severity of the crime as to amount to a denial of due process.

2. It is argued that the sentence was motivated by political and/or religious considerations. There is no evidence to substantiate these contentions.

3. It is argued that the defendants received unequal treatment because other persons involved in the same conspiracy were given lighter sentences. But one of these other persons, Klaus Fuchs, did receive the maximum sentence possible under the laws of his country; and all of them turned State's evidence, thus providing a reasonable basis for different sentences.

4. It is argued that since the Rosenbergs might have been given a lighter sentence had they been tried at the time of their commission of the crime, when the United States and Russia were allies, civil liberties would be violated were the sentence carried out now. But the conspiracy was found to have continued during at least the beginning of the cold war, and the trial judge also had a reasonable basis for consideration of present world circumstances, in evaluating the seriousness of the results of the crime committed several years earlier.

5. It is argued that the defendants are entitled to special consideration because their children would be left orphans. The President should consider this factor in line with the established practice in other commutation cases, but it does not present a civil-liberties issue.

6. It is argued that world opinion will consider this sentence "barbaric." This is a question of international policy, not of civil liberties.

THE SECOND PHASE

The pace of the campaign increased rapidly in the summer of 1952. A letter from David Alman dated June 5, 1952, indicates the foremost activities during this period:

Dear Friend: You are one of 1,500 men and women in our country whose combined assistance and interest has made an appeal to the Supreme Court possible in the Rosenberg-Sobell case.

We must ask you now to take two immediate and urgent steps on behalf of those in the death house.

(1) We are enclosing five amicus briefs on which you can obtain 50 signatures. We must gather a minimum of 100,000 to make an impreciable [sic] impact. At this moment we are far short of the required number. For the sake of saving lives, we must ask you to get these five amicus briefs signed—and returned to us by June 30th.

Are there 50 people—friends, neighbors, relatives, colleagues, shopmates—whom you can get to help save two lives? We know there are.

(2) Our Committee cannot be idle this summer. Too much is at stake, too little time is left. These are our expenses until September: Legal expenses, \$15,000; printing expenses (a pamphlet in Jewish, one on scientific aspects of the case, one on the letters of Ethel and Julius Rosenberg), \$3,000; assistance to the Rosenberg and Sobell children, \$2,000; overhead (postage, travel, rent, phone, stationery, salaries) \$3,000; advertising (Anglo-Jewish press, New York Times, Washington Post, etc.) \$1,500.

Altogether we need some \$25,000 to keep the case before the public until September.

We must count on you to make this possible.

A mass meeting was scheduled for June 17 at the Brooklyn Academy of Music which, at the last minute, canceled permission to use its auditorium. The rally took place instead at the Brooklyn Biltmore, where a crowd of 1,000 heard Rabbi Cronbach; Prof. Ephraim Cross; Mrs. Bessie Mitchell; Yuri Suhl; the Reverend Reginald Bass of the Community Church; Gloria Agrin, attorney for Dr. DuBois in his legal battles with the Government; and Albert Kahn, who read another message from the spies.

Later in the month, two "Search for the Truth" meetings were held at Manhattan Towers and at Great Central Palace featuring Rabbi Meyer Sharff. Other speakers were Yuri Suhl; Jean Taylor, "Negro civil rights leader"; Professor Cross; Dr. Annette Rubinstein, "American Labor Party"; David Alman; and Joseph Brainin.

On October 13, the Supreme Court refused to review the case, and a new upsurge of activity followed.

In a letter from Alman on October 13, 1952, the Committee spelled out its current program:

Dear Friend: The Supreme Court has denied the Rosenberg-Sobell petition for a review of their conviction and sentences.

The Rosenbergs may be executed in six weeks.

We are as firmly convinced as ever that the Rosenbergs and Sobell did not have a fair trial.

All that has been done up to this moment has prepared us for a supreme effort—to be made now—to save their lives for the moment when justice will prevail.

These are 5 steps which you must take now.

(1) Return to all in your city who have shown interest and concern in this case, by phone, mail and meeting. Discuss with them what you and they can do to save the lives of the Rosenbergs. Make the reaching of more people a paramount point.

(2) Collect funds immediately to place the largest possible ads in your local newspaper. Quarter page ads are the minimum effective ads. In these ads, appeal to President Truman to set aside the death sentences by Executive clemency. Use the enclosed draft of an ad as your guide.

(3) Organize a wire and letter campaign to President Truman, asking that the death sentences be set aside. Point out the unprecedented nature of these death sentences. Do as large a mailing as possible to any lists you can get, urging similar action.

(4) In these letters to President Truman, urge him to direct the Attorney General to consent to a new trial in the event that any new motions come before the court.

(5) Rush funds to our office. We will need scores of thousands of dollars within the next few weeks in a nationwide clemency appeal.

Please remember—this may be the very last chance we have to save the Rosenbergs.

Please let us know at once what you will do.

On October 22, David Alman announced a 2½-hour "Appeal to the President" meeting at Union Square on October 29. To publicize it, Alman said, 100,000 leaflets had been printed for distribution throughout the city, principally in the predominantly foreign-born garment and needle trades districts.

On November 19, a full crew of veteran Communist stagehands provided their services for a Theatre Rally to Secure Clemency for the Rosenbergs at the New York Palm Garden. The program featured a "Morning Newspaper," written by Ted Pollack, entitled "From the Record"; and "Midnight Visitor," a sketch written by Edward Eliscu. Announcements of the program, sent out by actor Peter Lawrence, declared:

The Rosenbergs face death.

We cannot allow this savage sentence, unprecedented in all of American history to be carried out.

We cannot allow the Rosenbergs to die while grave doubts persist and multiply as to the fairness of their trial.

Lawrence, whose background includes chairmanship of the Theatre Division of the New York Council of the Arts, Sciences and Professions, took refuge in the Fifth Amendment in hearings before this Committee in August 1955, when he was questioned about his Communist Party activities, particularly his efforts to enlist the New York Actors Union in Communist propaganda undertakings.

Sponsors of the rally were Nelson Algren, Dr. Dorothy Brewster, David Burliuk, Morris Carnovsky, Howard da Silva, Ossie Davis, Ruby Dee, Shirley G. DuBois, Edward Eliscu, Waldo Frank, Robert Gwathmey, Dashiell Hammett, Mervin Jules, Rockwell Kent, Frank Kleinholtz, Peter Lawrence, Ray Lev, Anton Refregier, Arthur Pollock, Paul Robeson, Martin Wolfson, Philip Evergood, Howard Fast, Max Gorkman, Jack Levine, and Sam Moore. Listed as participants were Robeson, Carnovsky, DaSilva, Lou Gilbert, Ken Harvey, Milroy Ingram, John T. McManus, Al Moss, Martha Schlamme, Phoebe Brand, Helen Sobell, Virginia Downing, DeWitt Drury, Marjorie Nelson, Ring Lardner, Jr., John Howard Lawson, Miles Malleon, Waldo Salt, Anna Seghers, and Mexican painter David Alfaro Siqueiros.

If one were to judge the Committee's accomplishments during its first 11 months of existence by how much attention it aroused among Americans generally, the Committee would be counted a failure. Actually it was achieving enormous success. As Dr. Fineberg later wrote:

It was rallying the most vociferous, impertinent, and raucous band that ever forced their racket on the public. The Communist sympathizers were back in line, heads high and unashamed, pulling their weight in the Communist galley. Even had they failed to crash the headlines, the organizers of the Committee to Secure Justice in the Rosenberg Case would have rendered an enormous service to the Communist hierarchy by rebuilding the shattered ranks of the more and the less faithful.

THE THIRD PHASE

A study of the first year of the Committee's operation discloses three phases in the transition of the Communist campaign from localized protests to an international cause celebre backed by all the resources of

the Party here and abroad. The first phase extended from the time of the Rosenbergs' arrest until the formation of the Committee in November 1951. During this period, the case followed normal judicial procedures. There was an indictment, a trial, a conviction, and an appeal. The second phase was one in which small groups of Communists and sympathizers met and distributed literature. While there was considerable propaganda, the activities were in limited areas. Nevertheless, during this period, zealots were being mustered for future operations. The third phase began late in November 1952, about 6 weeks after the Supreme Court refused for the first time to review the case. At this juncture, there began an avalanche of Rosenberg activity throughout Europe. Although there had been no Rosenberg committees in England or France for the previous 2½ years, committees appeared suddenly in London on November 27 and in Paris on December 3.

There was a very obvious reason for the timing of the developments abroad. On November 20-27 Rudolf Slansky and 13 codefendants were tried in Prague, and on December 2, Slansky and 10 of the other defendants were executed. Eleven of the fourteen defendants were Jews by birth who were completely devoted to the Communist cause and completely alienated from their own religious group. The trial, in which the Kremlin unmasked itself as a monstrous proponent of anti-Semitism, sent a wave of revulsion through the free world. To divert attention from the decimation of Jewish life behind the Iron Curtain—of which the Prague trials were but one example—the Communists turned frenziedly to the Rosenbergs.

With this third phase, activities in the United States began to expand at a tremendous rate.

On December 21 several hundred of the Communist faithful went to Sing Sing at the call of the Civil Rights Congress. They laid a wreath at the prison barrier and braved the rain to listen to harangues against America and its officials. "No government has such a record of legal murders and legal lynchings as the Government of the United States in the past 7 years," declared Communist author Howard Fast. The Sing Sing "Holiday Delegation," sponsored by the New York Civil Rights Congress, was led by William Patterson, executive secretary of the Civil Rights Congress; actress Karen Morley; Mrs. Bessie Mitchell; Mrs. Rosalie McGee, widow of Willie McGee; and Aubrey Grossman and Elaine Ross of the CRC.

On December 28 the first pickets arrived at the White House.

ENTER DR. UREY

The third phase batted on one of the most dazzling propaganda contributions the National Committee ever received—a statement in behalf of the spies by atom scientist, Dr. Harold Urey. Without having been present at the trial of the Rosenbergs and with no legal training at all by which to test his opinions, Urey, nevertheless, did not hesitate to declare flatly that "I found the testimony of the Rosenbergs more believable than that of the Greenglasses." Urey's statement, first contained in a letter to Judge Kaufman and published in the New York Times "Letter Columns" on January 5, 1953, earned

him banner headlines in the *Daily Worker*. "Although Urey never appeared in court," Dr. Fineberg noted, "it can be said without a doubt that he became the chief witness in the propaganda campaign."

In this letter, Urey appealed for clemency and challenged the ability of Greenglass to have transmitted any information on the atomic bomb. Several days later, Dr. Albert Einstein, who often proved himself to be a naive signer of pro-Communist statements, wrote to the *New York Times* endorsing Dr. Urey's views. The names of Urey and Einstein were featured prominently in Rosenberg Committee literature and emblazoned on the signs carried by Rosenberg pickets in front of the White House and before American embassies in foreign countries.

Not publicized, however, was a letter Urey wrote to the National Committee in which he declared:

(1) There has been much discussion of the importance of the secret data which Greenglass states he gave to the Russians. I believe this data was important and that it was not publicly known at the time it was disclosed, and I have been assured of the correctness of this conclusion by competent scientific men who were at Los Alamos at the time. Scientists who have made contrary statements are uninformed on the subject. * * *

(2) It seems probable to me that a mechanic such as Greenglass, capable of making metal parts from drawings, should be able to reproduce those drawings in rough form after a lapse of some years. No great scientific knowledge is required to understand the approximate shape, arrangement, and sizes of the mechanical object and considerable information of this kind could have been acquired and transmitted by Greenglass. This does not mean that he could be expected to understand the theoretical or scientific reasons for construction of the atomic bomb.

Urey has lent invaluable assistance to a wide range of Communist interests in the past. He was one of the founders of the American Committee for Democracy and Intellectual Freedom, which has been cited by the Committee on Un-American Activities as a Communist front. He has been actively affiliated with the American Committee for Protection of Foreign Born and was listed as one of its sponsors in a pamphlet written by the late Vito Marcantonio, attacking the alien registration law. He was a sponsor of the American Committee to Save Refugees, later merged with various other Communist fronts into the Joint Anti-Fascist Refugee Committee, an organization which dedicated itself to the aid of Communist refugees and has acted at all times in concert with the foreign policy of the Soviet Union.

One of the most interesting of Urey's activities from a historical standpoint, was his sponsorship of the National Emergency Conference for Democratic Rights, one of the organizations created by the Communists to implement their policy during the Hitler-Stalin pact. The National Emergency Conference for Democratic Rights was succeeded by the National Federation for Constitutional Liberties, which the Attorney General has designated as subversive and Communist.

This is a significant illustration of how the various Communist organizations, each created to accomplish a specific purpose, form separate but unified parts of the Communist conspiratorial system. The National Federation for Constitutional Liberties, born of the organization which Urey helped found, was merged after World War II with the notorious Communist International Labor Defense into a new Communist adjunct, "The Civil Rights Congress." The Civil

World's Leading Atom Scientist Says Rosenbergs Convicted On Perjured Testimony

Telegram by Dr. Harold Urey, Nobel Prize Winner, to The President:

DOMESTIC SERVICE		WESTERN UNION		INTERNATIONAL SERVICE	
Check the class of service desired and the time of day for which service is desired.		Check the class of service desired and the time of day for which service is desired.		Check the class of service desired and the time of day for which service is desired.	
FULL RATE TELEGRAM				FULL RATE TELEGRAM	
DAY LETTER				DAY LETTER	
NIGHT LETTER				NIGHT LETTER	

PRESIDENT EISENHOWER, WHITE HOUSE, WASHINGTON

JUNE 12, 1953

THE CASE AGAINST THE ROSENBERGS OUTRAGES LOGIC AND JUSTICE. IT DEPENDS ON THE TESTIMONY OF GREENGLASS AND HIS WIFE, BOTH CONFESSIONED SPIES AND ALLEGED ACCOMPLICES OF THE ROSENBERGS. GREENGLASS IS SUPPOSED TO HAVE REVEALED TO THE RUSSIANS THE 'SECRET' OF THE ATOMIC BOMB. INFORMATION SUPPOSED TO HAVE BEEN TRANSMITTED COULD HAVE BEEN IMPORTANT, A MAN OF GREENGLASS' CAPACITY IS WHOLLY INCAPABLE OF TRANSMITTING THE PHYSICS, CHEMISTRY AND MATHEMATICS OF THE ATOMIC BOMB TO ANYONE. HE AND HIS WIFE WERE THE ONLY ONES WHO PRETENDED TO CONNECT THE ROSENBERGS WITH ATOMIC ESPIONAGE. NEW EVIDENCE MAKES EVEN MORE PLAIN WHAT WAS PLAIN IT DEPENDS UPON THE BLOWING UP OF PATENTLY PERJURED TESTIMONY. I TRIED TO SEE THE ATTORNEY GENERAL THIS PAST WEEK BUT WAS UNABLE TO SECURE AN APPOINTMENT. ON BEHALF OF ALL THOSE INTERESTED IN THE DEFENSE, I ASK TO BE ALLOWED TO PRESENT MY UNDERSTANDING OF THE CASE TO YOU, MR. PRESIDENT.

HAROLD UREY

**Wire TODAY to PRESIDENT EISENHOWER:
Commute Rosenbergs' Death Sentences!**

Issued by: National Committee To Secure Justice in the Rosenberg Case, 1050 Sixth Ave., New York, N. Y.

Dr. Harold Urey gave a tremendous impetus to the Rosenberg campaign. Above, a telegram sent by the scientist to President Eisenhower a week before the spies were executed. Together with other similar statements by Urey, it was widely distributed by the National Committee.

Rights Congress was one of the mainsprings of the Rosenberg campaign, of which Urey, in turn, was one of the most vociferous proponents. No clearer example could be desired of how the long-range plans of the Kremlin, and the individuals recruited to implement them, maintain their continuity despite a maze of forms and names.

In January 1940 Urey signed a statement distributed by Dashiell Hammett "in defense of the Bill of Rights." The statement attacked legislation aimed at the investigation and control of the Communist conspiracy and declared, "We are not concerned with the merits or demerits of the doctrines advocated by the Communists." It also protested an alleged lack of police protection accorded William Z. Foster, chairman of the Communist Party, at a rally in Detroit. Urey was at the height of the Hitler-Stalin alliance, during which Foster and the American Communists were doing their utmost to sabotage American defense. Urey was also a signer of a statement defending the Communist Party and protesting "the badgering of Communist leaders" by the United States authorities.

On the specific matter of atomic espionage some of Urey's views would seem to disqualify him from passing judgment on the issues in the Rosenberg case. On March 4, 1946, in an interview with Urey on the then-current atomic spy disclosures in Canada, the *Daily Worker* reported: "Even if there were an atomic bomb secret, which he denied, Urey said that the Soviet Union could not be blamed for obtaining technical information in Canada." As late as October 28, 1949, the Washington, D. C., *Times Herald* quoted Urey as proclaiming, "I would fire every security officer in every atomic plant and laboratory in the United States with the exception of Los Alamos." Again, when Maj. George Racey Jordan disclosed that quantities of secret materials, equipment, and industrial plans had been shipped to Russia via the Great Falls Mont., Air Transport section, and that he had removed secret radar devices from Russian-bound planes, Urey retorted that Major Jordan "should have been court-martialed" if he removed anything from planes bound for the Soviet Union.

On January 8, 1953, 2,000 attended an open-air rally at New York's Straus Square, standing patiently in the rain to hear Rabbi Max Felshin and W. E. B. DuBois. "America," DuBois declared, "should be asking a pardon from the Rosenbergs and not the Rosenbergs who should be asking clemency."

Two days later, another auxiliary group, the "Musicians Committee to Secure Clemency for the Rosenbergs," presented its only event—a concert rally at the Hotel Capitol in New York, featuring Paul Robeson, Morris Carnovsky, Earl Robinson, Robert DeCormier, and Beulah Richardson. The program, the *Daily Worker* reported, consisted mostly of Jewish hymns and folk music. A dramatic poem on the theme of the ancient Judaic heroes, the Maccabees, declaimed by Beulah Richardson, was extolled by the *Daily Worker* as having "brought to the fore the theme of Negro-Jewish unity in the fight of oppressed people."

THE FIRST OF THE "VIGILS"

The first of the Rosenberg Committee's White House "vigils" began on December 28, 1952, and continued until January 17, 1953, when it was suspended, as the Committee announced, "out of respect" for

the inauguration of President Eisenhower. It was resumed from February 14 until February 24. On February 21, a special 16-car train, seating 1,000, left New York for the Capital to swell the ranks of the 24-hour-a-day marchers. The day before it ended, a mob of 2,000 demonstrators paraded before the Executive Mansion and joined in a mass prayer led by Rev. Harold Williamson and Cantor Jacob Kominsky.

The legal machinery which worked for the Rosenbergs, as for any convicted persons, resulted in a postponement of the execution, originally set for January 12. The Rosenberg Committee attempted to assume credit for this while denying, at the same time, that such legal machinery was in operation at all.

The *Daily Worker*, on January 5, removed any doubt about who stood behind the Committee's activities. A front page manifesto set forth the explicit Communist Party instructions for the Rosenberg campaign:

THE ROSENBERGS MUST LIVE!

7 days to execution date

1. Get your neighbors and friends to send wires or letters to President Truman and President-elect Eisenhower asking for clemency.
2. Get out a mailing to your organization or to people in your neighborhoods. Mailing kits can be obtained at the committee.
3. Collect funds for the committee.
4. Join the Prayer and Clemency Vigil at the White House running 24 hours daily. Report to Inspiration House, 1867 Kalorama Road, NW., Washington, D. C.
5. Join your neighborhood activities—leaflet distributions, motorcades, vigils, etc.
6. Visit every clergyman, officeholder, doctor, lawyer and any other notables in your community. Ask him to speak for clemency.
7. Ask your rabbi or minister to conduct a prayer meeting in his congregation.
8. Mobilize your community, shop, union, or organization for participation in the mass meeting for clemency, January 8, 5-8 p. m., at Strauss Square, East Broadway, New York City.

A National Clemency and Prayer Gathering was scheduled to be held on January 4 and 5 at the Washington National Guard Armory in conjunction with the White House demonstration. This was canceled when the board of directors of the Armory, after making inquiries about the National Committee, voted unanimously to revoke its contract with the Rosenberg organization.

Some of the participants in the Washington demonstration, as disclosed by investigation of Washington police, were:

Jones Schustuck, William Schustuck, Marsha Stieff, Ann Fisher, Rose Marie Greco, Sol Schwartz, Edward Muel, Bernard Jacks, William Duncan, Helen Phillips, Anita Rath, Sylvia Grey, L. Joel, H. Sefkis, F. Inkila, S. Perlmutter, M. Zaku, M. Abrahamson, J. Rosenbloom, Roscoe Burd, Morris Swadish, Zackary Gossow, Solbert Bodenhume, Harvey Silver, Carl Moos, Elizabeth Moos, Sylvia Lopez, Arne J. Beardsen, Victor Kunae, James Malloy, Rosalie Junae, Virginia Mallory—New York;

A. Cohen, Diores Munsey, Stephanie Kaufman, Joan Harehik, Joyce Parلمان, Emma Johnson, Elizabeth Mitter, Mary Thompson, Sue Van Howe, Lixsin Jarriel, Genivieve Coleman, Virginia Blaunce, Walter Mixon, M. Schorow, Richard Davidson, Sam Weinberg, Nathaniel Pick—Chicago;
John Gilman, James Knox, W. Duke, Gerard Kushner—Milwaukee;
Phillip M. Koritz, Sue Koritz, Herman Tamsky—Boston;

Ethel Katz, Mr. Brancha, Helen Austin, Guy Endor, Sylvia Golden, Rev. G. Lewis Randolph, Rueben W. Borough, Cleophus Brown, Blanche Spindell, Mr. and Mrs. John Wexley—Los Angeles; and Leah Solomon, Tujunga, Calif.; Willis Chester Wise, Compton, Calif.; Edith Mendes, Bellflower, Calif.; Terry Duxler, North Hollywood, Calif.; Freda Mallen, Van Nuys, Calif.

Another Round-the-Clock Vigil was conducted in New York's Jewish section at DeLancy and Clinton Streets under the sponsorship of the Manhattan Committee to Serve Justice in the Rosenberg Case. This organization printed its publicity in Yiddish, as well as in English, as part of the blatant Communist exploitation of the religious aspects of the campaign.

SOME OF THE CAMPAIGN SUPPORTERS

On January 14, 1953, the *Daily Worker* began publication of the first of long rosters of "prominent" individuals—almost without exception veteran Communist trotting horses—whose names were supposed to lend prestige to the campaign:

CRY OF "SAVE ROSENBERGS" SWEEPS WORLD ART, SCIENCE, LITERARY CIRCLES

The cry "Save The Rosenbergs" is sweeping the world and the writers, artists, musicians, scientists and educators of every country are among those urging Presidential clemency for the young couple charged with "conspiracy to commit espionage" but actually framed as "atom spies." Following is a partial list of the notables who have raised their voices against the death penalty for the innocent pair:

U. S. A.

WRITERS:

Waldo Frank
Ossie Davis
Marian Sackler Lamond
Gertrude Saxton
Alexander Saxton
Nelson Algren
Dashiell Hammett
Arthur Pollock
Sam Moore
Millen Brand
Arnaud D'Usseau
Waldo Salt
Edward Ellsen

ACADEMICIANS:

Dr. Robert Morsa Lovett
H. Hubert Wilson
Malcolm Sharp
Prof. William G. Houk
Rudolf Carnap
Paul L. Whitely
Anatol Rapoport
Roland H. Bainton
Frank W. Weymouth
Charles Morris
Harry Kelven
Stephen Love
G. Murray Branch
Mary Van Kleeck
Francis R. Walton

Dr. Katherine Dodd
Bernard M. Loomer
George Sarton
N. Coburn

ACTORS and MUSICIANS:

Paul Robeson
Howard DaSilva
Morris Carnovsky
Ruby Dee
Lucy Brown
Max Goberman
Ray Lev
Martin Wolfson

SCIENTISTS:

Albert Einstein
Dr. Harlow Shapley
E. U. Condon
Philip Morrison
Harold C. Urey

ARTISTS:

Karl Metzler
Anton Refregier
Rockwell Kent
David Burluk
Phillip Evergood
Jack Levine
Robert Gwathmey
Mervin Jules
Frank Kleinholz
Peter Blume
Hugo Gellert

Another list of writers and artists appeared in the *Daily Worker* on January 21st:

Paul Robeson
Albert Maltz
Freda Kirchwey
V. J. Jerome
John T. McManus
Arthur Garfield Hays
Dr. Gene Weltfish
Morris U. Schappes
Maurice Becker
Hugh N. Mulzac
Albert Kahn
B. Z. Goldberg
Waldo Frank
Carl Marzani
Karen Morley
Herbert Aptheker
Arthur Pollock
Yuri Suhl
I. F. Stone
Dorothy Day
Samuel Sillen
Frank Kleinholz
Morris Carnovsky
Howard da Silva
Charles White
Martha Schlamme
James Aronson
Cedric Belfrage
William Reuben
Hugo Gellert
Alvah Bessie
David Burluk
Ben Field

Howard Fast
W. E. B. DuBois
Edwin Berry Burgum
Lucy Brown
Arnaud d'Usseau
Michael Gold
John Howard Lawson
Peter Blume
Barnard Rubin
Jack Levine
Lester Cole
Albert Kahn
Lou Gilbert
Herbert Biberman
Milroy Ingram
Al Moss
Edward Strickland
Herb Tank
Ossie Davis
Gale Sondergaard
Shirley Graham
Leon Bibb
Hope Foye
Lloyd Brown
Louis Harap
Nelson Algren
Millen Brand
Alexander Saxton
Dashiell Hammett
Ray Lev
Phillip Evergood
Rockwell Kent
Robert Gwathmey

THE COMMUNIST TIE-UP

Throughout the campaign, the Communists constantly used the Rosenberg campaign to aid other propaganda undertakings and there were numerous illustrations of the relationship between the Rosenberg and other overt Communist ventures. One of the clearest of these was offered by two adjoining advertisements in the *Daily Worker* of October 22, 1952. The one announced two Rosenberg rallies and was signed by David Alman, executive secretary of the National Rosenberg Committee; next to it was an announcement of a "victory celebration and salute" for Isidore Begun, educational director of the New York State Communist Party, and Si Gerson, New York State Communist Party legislative director, in which David Alman was listed as "a speaker from the Rosenberg Committee."

In January 1953 the New York Civil Rights Congress distributed the handbill, headlined "Stop the Legal Lynching of Ethel and Julius Rosenberg." The text, however, dealt primarily with another Communist project:

The "rape" and "murder" frameups of innocent Negroes are terrorizing the Negro people, and dividing all Americans in their demands for democracy and peace.

It is well known how Negroes are framed in the South and given death penalties when white men, for the same offense, are given only short sentences or let off scot free. Similarly here, the only time the death penalty is used on a peacetime espionage charge the victims are a Jewish couple.